



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy and to cancel a One Month Notice to End Tenancy for cause.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The tenant received the One Month Notice to End Tenancy in person on June 09, 2015. The tenant had 10 days to file her application to cancel the notice and filed on June 18, 2015. Therefore the tenant filed her application within the required time frame and withdrew her application for more time.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice cancelled?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2012. Rent for this unit is \$1,100.00 per month and is due on the first of each month. The unit is located on the landlord's property and the landlord lives in another house on the property and works from his home operating a business.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) in person on June 09, 2015. Prior to this the tenant had been served five 10 Day Notices for unpaid rent between July, 2013 and August, 2015 with the last three being served on June 12, 2015, July 02, 2015 and August 03, 2015.

The landlord testified that the tenant has been continually late paying rent since her tenancy started. The tenant often pays rent between the 5th and the 20th of each month. The landlord testified that the arrangement for paying rent was that the tenant was to bring the rent to the landlord's home on the first of each month. As the landlord works from home and his wife is home most of the time, the tenant always has someone on the property to leave the rent with. The landlord testified that if he and his wife go away for a long weekend and it falls on the first of a month then the tenant can pay the landlords daughter or son or a friend of the landlords will collect the rent.

The landlord testified that rent for June was not paid until June 20th, rent for July was not paid until July 9th and rent for August was not paid until August 10th. Rent for February, 2015 was paid late to the landlord's daughter on February 11, 2015. The landlord has provided rent receipts which shows rent was accepted for use and occupancy and did not reinstate the tenancy for July and August. The landlord testified that the tenant was served with a One Month Notice on June 09, 2015. This Notice has an effective date of July 09, 2015 and provided the reason that the tenant is repeatedly late paying rent.

The landlord testified that on August 01, 2015 the landlord was home until 1.00 p.m. The tenant did not come to pay the rent; the landlord called the tenant 10 times but no response. The landlord was unable to leave a message as the tenant's mail box was full. Later the tenant said she had come to the landlord's house on August 01, 2015 and left a note for the landlord. On

August 03, 2015 the landlord went to the tenant's unit, her car was there but she would not answer her door. The landlord testified that if the tenant came on any month and the landlord was not at home for any reason the tenant could call the landlord and the landlord would come home to get the rent. The tenant does not call or pay rent on the first of the month.

The landlord testified that they do not mind how the tenant pays the rent; it could be cash or cheque. The landlord agreed that the tenant should not have to track the landlord down; however, the landlord reiterated that he or his wife are home on the first of each month 98 percent of the time. If the tenant had an issue the tenant could have provided postdated cheques to the landlord.

The landlord's daughter was called as a witness. The witness testified that she has seen the landlord calling the tenant on the 3rd and 4th of a month many times trying to get the rent. The tenant will often send her children down with the rent money. On February 06, 2015 the landlord was away and the witness called the tenant and left a message to make arrangements for the witness to collect the rent. On February 09, 2015 the tenant returned the call and said she did not have the full amount of rent. Rent was not paid by the tenant until February 11, 2015. No 10 Day Notice was issued that time as the landlord was away.

The landlord orally requested an Order of Possession at the hearing if the tenant's application is unsuccessful. The landlord requested that an Order of Possession is effective as soon as possible.

The tenant disputed the landlord's claims. The tenant testified that she believes the late payments are a joint problem between the landlord and tenant as no proper system has been arranged for the payment of rent. The tenant testified that she was not late in August, 2015 as she had gone to the landlord's home on August 01 three times to pay the rent but no one was home. The tenant left a note for the landlord and then was out of town working for a few days. The landlord called 10 times but the tenant was at work.

The tenant testified that in July she went many times to pay the rent but the landlord was not there on the first of the month. In February, the landlord did not inform the tenant that they were away or that his daughter would be collecting the rent. The tenant testified that she does not

often check her phone messages and did not get the message from the landlord's daughter straight away. The tenant testified that they were told to watch out for the landlord's red truck on his property to know when he is home to go and pay the rent.

The tenant asked the landlord if it would help if the tenant provided postdated cheques for the next year. The landlord responded that no, this would not help as the tenant has been late with her rent too many times. The tenant stated she felt discriminated against.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I refer the parties to s. 26 of the *Act* concerning payment of rent:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant has the responsibility to ensure rent is paid on the first day of each month as directed and agreed in the tenancy agreement. I am satisfied from the evidence before me that rent has been repeatedly late over the course of the tenancy including February, June, July and August this year.

While I accept that there appears to be a casual arrangement in place regarding how the rent is paid it still does not detract from the tenant's responsibility to ensure the rent is paid on the day it is due. If the tenant felt the system to pay the rent was haphazard or prevented the tenant meeting her obligation to pay the rent the tenant could have provided alternative methods to pay the rent such as providing the landlord with postdated cheques.

The Residential Tenancy Policy Guidelines #38 provides parties with some guidance as to the late payment of rent. It states the following:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

I find the tenant has been repeatedly late paying rent on at least four occasions in 2015; February, June, July and August. I also find the landlord’s evidence credible that the tenant has been repeatedly late on many other occasions in 2013 and 2014. Consequently, I find the tenant’s application to cancel the Notice cannot succeed and is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession,
and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy I will grant that Order. The effective date on the Notice to End Tenancy in this matter was July 09, 2015; however, as the landlord must provide one clear month’s notice that date has been amended to July 31, 2015. The landlord has requested an effective date on the Order of Possession to be as soon as possible; however, as the landlord has accepted rent for the month of August for use and occupancy only I have extended the effective date of the Order of Possession to August 31, 2015.

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on August 31, 2015 pursuant to s. 55 of the *Act*. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 21, 2015

Residential Tenancy Branch

