



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenancy began on September 1, 2013 and the tenant is obligated to pay \$1,100.00 per month in rent in advance on the first day of each month. The tenant acknowledged having been served with a one month notice to end tenancy (the "Notice") on September 28, 2015. The Notice alleges that the tenant has been repeatedly late paying rent.

The landlord testified that the tenant was late paying rent on 4 occasions since September 2014. She provided a receipt showing that rent for September 2014 was paid on September 2, rent for January 2015 was paid on January 3, rent for July 2015 was paid on July 3 and rent for September 2015 was paid on September 2. Although the landlord also submitted a receipt for June 2015 which was dated for June 2, she testified that she had made an error in dating that receipt and acknowledged that rent for that month was paid on the first day of the month.

The tenant acknowledged that rent was paid late in September 2015 and claimed that the government ministry which pays her rent had made an error. She claimed that she had a statement from that agency in which they acknowledged having made an error, but did not submit that statement into evidence. The tenant claimed that she had also given this statement to the landlord and the landlord acknowledged having received a

handwritten letter but stated that it was not on letterhead and there was no indication that it had been authored by a government worker.

The tenant claimed that the landlord had written the wrong dates on the receipts for the September 2014 and January 2015 rent payments and insisted that she had paid her rent on the first day of the month in those months. She claimed that she had bank account statements which could prove this, but did not submit those statements into evidence. The tenant argued that because the landlord had acknowledged having written the wrong date on the June 2015 receipt, it showed that she could have written an incorrect date on the other receipts as well. The landlord denied having written the incorrect date on those receipts.

The tenant argued that she because she paid part of her rent for July 2015 on the first day of the month, she was not late in paying rent in that month even though she had not paid the balance of the rent until 2 days later.

Analysis

The tenant has a contractual obligation to pay the entire amount of her rent on the first day of each month. Residential Tenancy Policy Guideline #38 provides that 3 late payments of rent are sufficient to give cause to the landlord to end the tenancy.

The tenant claimed that the landlord wrote the wrong date on the receipts for September 2014 and January 2015. The landlord freely acknowledged that she had written the wrong date on the June 2015 receipt even though this admission went against her own interest and I find on the balance of probabilities that the landlord's record keeping is very precise and accurate. The tenant claimed that her bank statements could prove that she paid rent on time in those months, but chose not to submit this evidence even though it would have been readily available to her. I accept that the receipts issued by the landlord reflect the actual date of payment, apart from the June 2015 receipt, and I find on the balance of probabilities that the tenant paid rent late in September 2014 and January 2015.

The tenant acknowledged that she did not pay rent in full on July 1. A partial payment on the first day of the month does not fulfill the tenant's contractual obligation and I find that rent was paid late in July 2015.

The tenant claimed that the late payment of rent in September was due to an error made by the Ministry, suggesting that she should not be held responsible for that late payment, but provided no evidence to corroborate that claim. In the absence of proof

that the late payment in September 2015 was due to a Ministry error, I find that the tenant paid rent late in September 2015.

I find that the tenant paid her rent late 4 times in the 13 months preceding the service of the Notice and I find that the landlord has cause to end the tenancy. I therefore decline to order that the Notice be set aside and I dismiss the tenant's application.

As the effective date of the Notice has long since passed, I order that the tenancy end at 1:00 p.m. on December 31, 2015. The obligations of both parties, including payment of rent, continue until the end of the tenancy.

Conclusion

The application is dismissed. The tenancy will end on December 31, 2015.

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: December 01, 2015

Residential Tenancy Branch

