



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, F

Introduction

The tenant applies to cancel a one month Notice to End Tenancy received January 28, 2016, given under the statutory ground that the tenant is repeatedly late paying rent.

Both parties attended the hearing, the landlord by its agent Mr. S., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has been repeatedly late paying rent? Are there mitigating factors which might detract from the late payment being a fundamental breach of the tenancy agreement?

Background and Evidence

The rental unit is a one bedroom “plus den” apartment. The tenancy started in August 1999. The current rent appears to be \$686.14, according to the landlord, though the tenant has been paying \$670.00 for some unstated reason. Rent is due on the first day of each month according to the written tenancy agreement.

The landlord holds a \$325.00 security deposit, paid by the tenant to his original landlord in July 1999.

The respondent landlord took over the property about two years ago.

Mr. S. for the landlord produces an extract from its business records showing that the tenant has been consistently late paying rent. He points out fourteen instances since January 2014. Usually the rent is late by four or five days but sometimes it's late by two weeks.

Mr. S. notes Residential Tenancy Policy Guideline 38 "Repeated Late Rent" indicating that only three late payments need be shown to justify a one month Notice to End Tenancy.

He relies on the tenant's late payment of November and December 2015 and January 2016 rents, though he notes that the tenant has paid his rent on time for February and March 2016 (after the Notice).

Starting in November 2015, the landlord issued three consecutive ten day Notices to End Tenancy for unpaid rent, plus late fees it has been charging to the tenant. One Notice was issued November 2, then December 2 and then January 5. In each case, the tenant paid the rent and the Notice was cancelled.

The tenant says he has seasonal work and so he has been in the habit of paying rent a few days late. He says he's often not at home when the rent is due. He indicates he was in the habit of paying rent a few days late before and since this landlord took over the property.

He claims that the late fees are illegal for some unstated reason and that the landlord has cancelled Hydro services that were included in his rent.

The tenant says that Mr. S. told him that as long as the amount he owed was under \$100.00 there would be no problem.

He says that he didn't realize he could apply to cancel the ten day Notices. He thought they were a formality. He states he is literate but didn't read the ten day Notices, which very clearly make the point that they are not formalities and that the tenant can apply to cancel a Notice.

In response, Mr. S. says that the landlord has been very lenient with the tenant. He says that the ten day Notices are "automatically" issued by landlord unless the amount owing is under \$100.00

Analysis

The tenant's issues about the Hydro and the illegality of late fees are not issues fairly raised by his application. There is no claim for a repair order to restore a service or facility or for damages disclosed in the area of the application document marked "Nature of Dispute." I decline to make any determination about them. The tenant is free to make application for dispute resolution about any or all of them.

It is clear that this landlord and previous landlords have acquiesced in the tenant's repeated tardy rent payments. By that conduct they have given indication that rent late by a few days will not be a significant issue.

In fairness, a landlord in such a position is obliged to forewarn a tenant that it intends to rely on the strict requirements of the tenancy agreement and receive its rent on the due date. This can take the form of a letter to a tenant demanding rent on time. There was no forewarning letter in this case.

Another very clear method of indicating that late rent will no longer be ignored is by giving a tenant a ten day Notice to End Tenancy, as the landlord has done here.

However, there are unusual circumstances in this case. The tenant was under the impression that the ten day Notices were a formality and that if he paid the amount demanded there would be no consequence. His grounds for this belief appear to be substantiated by Mr. S.'s testimony that the ten day Notices were issued automatically by the landlord; whenever any tenant's rent balance was over \$100.00.

I find that in this case the fact of the ten day Notices in December, November and January did not serve to reasonably warn the tenant that after a long history of acquiescence to late rent payments, the landlord was now requiring rent to be paid on the due date.

Conclusion

In the particular circumstances of this case I find that the landlord has waived its right to rely on late rent payments up to January 2016 (the date of the one month Notice) as a ground for ending the tenancy. The tenant's application to cancel the Notice is granted and the one month Notice to End Tenancy dated January 27, 2016 is hereby cancelled.

By the fact of the one month Notice at issue here, the tenant has been given notice and warning that he must adhere strictly to the terms of his tenancy agreement by paying rent on time from now on.

As it is the tenant's late rent payments that have caused this matter, I decline to grant the tenant recovery of any filing fee.

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: March 27, 2016

Residential Tenancy Branch

