



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord's two agents (collectively the "landlord") attended the hearing. The landlord confirmed they were each agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. It should be noted that the tenant raised the issue of his inability to review the digital evidence as submitted by the landlord. However, in this decision I only describe and rely on the evidence relevant to the issues and findings in this matter. I have not relied on the digital evidence to form any part of my decision.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, the tenancy began on September 1, 2015 on a month-to-month basis. Rent in the amount of \$850.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$425.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated July 29, 2016 with an effective date of August 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Landlord

The landlord testified to eight instances in which the tenant did not pay rent by the first of the month. The landlord has submitted copies of issued receipts. The landlord testified that he did not require cash; however the tenant typically found the landlord in the parking lot after the first of each month and provided partial cash payments.

Tenant

The tenant confirmed these late payments but contended that he was instructed to pay cash at the landlord's place of business and on weekends the business was closed. The weekend closure resulted in late rent. The tenant also explained there were other instances he was working and unable to reach the landlords place of business before closing. Further, the tenant explained at times receipts were issued a day or two following payment. The tenant could not provide dates that this occurred.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant is repeatedly late paying rent. The onus is on the landlord to prove the tenant was repeatedly late paying rent. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*.

Upon review of the months in which rent was paid late, I found only two months in which the first of the month fell on a weekend or statutory holiday. The remainder six months the business remained open on the first of the month yet the tenant paid late. In relation to the tenant's claim that receipts were issued late, I find the tenant has provided insufficient evidence to substantiate this. Based on the above I find the tenant repeatedly paid rent past the date indicated in the tenancy agreement. Accordingly, I find the landlord has met the onus and dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if tenants make an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenants' application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to an order of possession.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

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: September 14, 2016

Residential Tenancy Branch