



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on July 17, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenants are required to vacate the rental unit on August 31, 2016.

The reasons stated in the Notice was that the:

- Tenant is repeatedly late paying rent;
- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlord testified that the tenants are repeatedly late paying rent. The landlord stated that the rent is due on the first of each month.

The landlord testified that the rent cheque for February 2016, was returned by the financial institution due to insufficient funds. The landlord stated May 2016, rent was paid on May 6, 2016 and June 2016, rent was paid on June 3, 2016.

The landlord testified that the tenants were also required to pay a pet deposit; however, they have failed to pay this deposit.

The tenant testified that they noticed that the rent cheque for February 2016, had not gone through their account and contacted the landlord and ask the landlord to deposit the cheque. The tenant acknowledged that they were responsible for having insufficient money in their account, but it was an error as an unexpected school fee came out of that account. The tenant testified the May 2016 and June 2016, rent was sent by e-transfer and was likely late due to pay days.

The tenant testified that the pet deposit was waived by the landlord as they had to pay to have the carpets cleaned at the beginning of the tenancy.

The landlord argued that they did not waive their rights to collect a pet deposit. The landlord stated they told the tenants that the pet deposit must be paid.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to support that the:

- Tenant is repeatedly late paying rent; and
- security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

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

In this case, the tenants' rent is due on the first of the month. February 2016, rent cheque was returned for insufficient funds, May 2016, and June 2016, rent was paid late due to pay days. I find the tenants have been late paying rent on these occasions. Therefore, I find the landlord has proven that the tenants are repeatedly late paying rent.

I also accept the landlord's version over the tenant's version that the tenants failed to pay a pet damage deposit. I find the tenant's testimony contradicts the tenants' written statement in their details of dispute, as the tenants write,

"We also request that that the pet deposit be waived because when we moved in we asked that the carpet be cleaned. They refused saying it is a personal preference..."

[Reproduced as written]

This statement clearly indicates that the landlord did not agree to waive any pet damage deposit. Therefore, I find the landlord has proven the tenants failed to pay a pet damage deposit within 30 days of the tenancy commencing.

I am satisfied that the landlord has proven the Notice on the above stated reasons; therefore, I find it not necessary to consider the remaining reasons stated in the Notice.

I find the Notice issued on July 17, 2016, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice.

As I have found that the tenancy legally ended, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Since the landlord have accepted occupancy rent for the month of September 2016, I find it appropriate to extended the effective vacancy date in the Notice to **September 30, 2016**, pursuant to section 66 of the Act.

Therefore, I find the landlord is entitled to an order of possession effective **September 30, 2016, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were was not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel the Notice, issued on July 17, 2016, is dismissed. The landlord is granted an order of possession.

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 15, 2016

Residential Tenancy Branch