



Residential Tenancy Branch

RTB-136

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order cancelling the landlord's 1 Month Notice to End Tenancy dated July 28, 2016 and a monetary order for loss of quiet enjoyment. The tenant also requested recovery of the filing fee for this application from the landlord. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to the orders requested?

Background and Evidence

The relevant facts of this case are as follows. This tenancy began on September 1, 2013. The rent is \$900 per month. The tenancy agreement states that the rent is due on the first day of each month. On July 28, 2016 the landlord served the tenant with a 1 Month Notice to End Tenancy for repeated late payment of rent. The tenant disputed the Notice on August 4, 2016.

The landlord testified as follows as to the late rental payments:

February 2016 – rent paid on February 9, 2016

March 2016 – rent paid on March 8, 2016

April 2016 – rent paid on April 5, 2016

May 2016 – rent paid on May 16, 2016

June 2016 – rent paid on July 22, 2016

July 2016 – rent paid on July 4, 2016

August 2016 – ½ rent paid on August 5, 2016 and ½ rent paid on August 15, 2016

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The landlord testified that he repeatedly spoke and wrote to the tenant about the late payments being unacceptable to him and on one occasion, July 21, 2016, served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. This Notice was served in connection with the unpaid rent for June. In that instance the tenant paid the full amount of the rent on the following day, July 22, 2016.

The landlord acknowledged that due to being out of the country for many years, he was not as able to stay on top of the rent situation as he is now that he is back in the country. He testified that “since being back in the country I am better able to stay on top of things.” The landlord also testified that he has “financial commitments that [he] must meet” and that it is his right under the tenancy agreement and under the Act to receive the rent on time.

For his part, the tenant testified that when he moved into the rental unit he had “an agreement that [he] could pay the rent when [his] pay cheques came in.” The tenant testified that when the landlord was overseas he never complained about the late rent payments. The tenant testified further that he believes the landlord is only “doing this” because he lost at a previous hearing involving a 2 Month Notice to End Tenancy for Landlord’s Use. With respect to the latest rent payment, namely, the June rent, the tenant testified that that was his “mistake” because he thought he could withhold rent while the 2 Month Notice was being disputed. The tenant also testified that he has paid the rent on time for September and October.

In response to the tenant’s testimony, the landlord testified that there was “no verbal, written or implied agreement ever”. The landlord testified that the tenant unilaterally decided to pay the rent when he wanted to.

I note that in total, the landlord has served the tenant with three Notices to End Tenancy. These are as follows:

2 Month Notice to End Tenancy – served April 30, 2016

1 Month Notice to End Tenancy – served July 28, 2016

10 Day Notice to End Tenancy – served July 21, 2016

Analysis

The tenant has requested an order cancelling the landlord’s Notice to End Tenancy. When a tenant disputes a Notice, the burden is on the landlord to establish, on a balance of probabilities, that the reason indicated on the Notice for ending the tenancy is justified. In the present case, the reason given is that the tenant has been repeatedly late paying the rent. In assessing whether the landlord has met the burden of proving this ground for ending the tenancy, I refer to Residential Tenancy Policy Guideline No. 38 which states as follows:

¹
The Residential Tenancy Act provides 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

In the present case, applying the Guideline set forth above, I find that the landlord has established that the tenant has been repeatedly late paying the rent such that the landlord may end the tenancy. The rent was paid late six times prior to the landlord serving the Notice. This number of late payments well exceeds the minimum number set forth in the above Guideline. I am not persuaded that the landlord ever agreed, implicitly or explicitly, to late payment of the rent depending on the tenant's ability to pay. If the landlord did give the tenant the impression that late payment was acceptable during the time that he was out of the country, I am satisfied that the landlord corrected that impression once he was back in town.

The tenant has also requested compensation in the amount of the equivalent of four months' rent. The tenant makes this claim on the basis that the series of Notices served on the tenant by the landlord amounted to a violation of his right to quiet enjoyment of the rental unit. I am not satisfied that the tenant has established this claim. The landlord exercised his rights under the Act to serve Notices when the rent was not being paid. I am not persuaded that this amounted to a loss of quiet enjoyment for the tenant even though the experience of being served with Notices is no doubt unpleasant.

Having found then, that the tenant is not entitled to an order dismissing the landlord's Notice to End Tenancy I find that the landlord is entitled to an order of possession effective two days from the date of service. In making this finding I refer to Section 55 of the Act which states as follows:

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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the notice.**

Conclusion

Based on the above, I hereby dismiss the tenant's application in its entirety.

I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This 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: October 04, 2016

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