



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to be allowed more time to make an application to dispute a notice to end tenancy, and to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 20, 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.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Procedural matter

The tenants applied to be allowed more time to make an application to dispute a notice to end tenancy. The Notice was received on September 20, 2016, and their application was filed on September 26, 2016, I find the tenants applied within the statutory time limited. Therefore, I do not need to consider this portion of their application.

Issue to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began on August 1, 2013. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00.

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

The reason stated in the Notice was that the tenants have:

- Tenant is repeatedly late paying rent; and
- Tenant has caused extraordinary damage to the rental unit.

The landlord testified that the tenants are late paying rent every month and that have to remind them every month that rent is due on the first.

The landlord stated rent has been paid as follows:

Rent Due 2016	Date paid	Days late
September	September 6	5
August	August 3	2
July	July 4	3
June	June 6	5
May	May2	1
April	Paid early	
March	March 4	3
February	February 5	4
January	January 5	4

The tenants testified that it is not their fault that rent is late. The tenants stated that the landlord only wants email transfers and that they have “crappy” internet services. The tenant stated that the landlord is using the date they accepted the transfer not the actual date it was sent.

The tenants stated rent has been paid as follows:

Rent Due 2016	Date paid	Days late
September	September 6	5
August	August 2	1
July	July 2	1
June	June 4	3
May	May 1	Not late
April	Paid early	Not late
March	March 3	2
February	February 4	3
January	January 4	3

The tenants testified that landlord has not issued the notice to end tenancy in “good faith” as they have an ulterior motive as their daughter wants to move in to the premise. The tenants stated that the late rent issue only became a problem after their daughter wanted to move in.

The tenants testified at since rent was paid within five days that automatically cancels the eviction process.

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 show that the tenants have been:

- Tenant is repeatedly late paying rent.

The tenants have claimed the landlord has not issued the Notice in “good faith”; however, the tenants were not issued a 2 Month Notice to End Tenancy for Landlord Use of Property, pursuant to section 49 of the Act, where the landlords must prove that

in “good faith” they truly intend to use the property for reasons stated. Therefore, I do not accept the tenant argument based on good faith.

The tenants have claimed that rent has been paid within five days; therefore a notice to end tenancy cannot be valid. However, the tenants were not issued a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Act. Therefore, I do not accept the tenants’ argument based on rent being paid within five days.

In this case, the both parties have provided evidence with dates of payments, as the rent has be exchanged by email transfer. I accept the tenants’ version of when the payments of rent were sent, as the tenants have no control and when the other party accepts the transaction.

However, based on the tenants’ evidence, I find the tenants have been late seven times within the nine months period. Three late payments are the minimum amount to end the tenancy.

While the evidence of the tenants was that their internet service is “crappy” they were aware of the problem and it was within their control to make alternate arrangements to ensure rent was received on time, such as going to the bank and using their services. The landlord is not responsible to give the tenants reminders that rent is due.

Further, if this was the only acceptable payment method permitted by the landlord, and the tenants knew they were unable to meet their obligations due to internet service, I find it was within the tenants control to make an application for dispute resolution to permit another method of payment, only if the landlord permitted method of payment was unreasonable.

However, I note that after the Notice was issued the tenants have paid subsequent on time and by different methods. This makes me believe that other alternative methods of payments were not an issue for the landlord.

Based on the above, I find the tenants have breached the Act, by repeatedly late payments of rent. I find the Notice issued on September 20, 2016, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenants’ application to cancel the Notice. As the landlord has accepted occupancy rent for the month of November 2016, I find it appropriate to extend the effective vacancy date in the Notice to November 30, 2016, pursuant to section 66 of the Act.

Since I have dismissed the tenants' application, I find that the landlord is entitled to an order of possession effective **November 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.

As the tenancy has legally ended on the basis of repeatedly late payments of rent, I find it not necessary to consider the remaining reason stated in the Notice.

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Conclusion

The tenants' application to cancel the Notice, issued on September 9, 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: November 18, 2016

Residential Tenancy Branch