



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This is an application brought by the tenant requesting an order canceling a one-month, Notice to End Tenancy that was given for cause, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether to cancel or uphold a Notice to End Tenancy that was given for cause, and whether or not to issue an order for recovery of the \$100.00 filing fee.

Background and Evidence

This tenancy began on April 6, 2016, as a fixed term tenancy, ending on March 31, 2017.

The monthly rent for this unit is \$1400.00, due on the first of each month.

A one-month Notice to End Tenancy was posted on the tenants door on February 16, 2017 listing the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Security or pet deposit was not paid within 30 days as required by the tenancy agreement.

I dealt first with the claim of repeatedly late rent payments.

The landlord testified that the tenant's rent has been late on five occasions as follows:

May 2016,
June 2016,
July 2016,
December 2016,
January 2017.

The landlord further stated that this is happening too frequently, and therefore they decided to end the tenancy for repeated late rent.

The tenant testified that rent has been late on the five occasions as listed by the landlord, however for May 16 through July 16, rent was late because she was on EI having been temporarily suspended at work.

The tenant further testified that, she was again suspended from work in December 2016, and as a result the December 2016 and January 2017 rents were late.

The tenant further argued that she believed that the landlords have waived the right to end the tenancy, as, on each occasion, the landlords accepted a \$20 payment and agreed to wait for the remainder of the rent, and not issue a Notice to End Tenancy for nonpayment of rent.

The tenant is therefore asking that the Notice to End Tenancy be canceled, and this tenancy be allowed to continue.

Analysis

Section 47(1)(b) of the Residential Tenancy Act states:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

In this case the landlord has provided sufficient evidence to show, and the tenant has admitted, that rent has been late on five occasions, as follows:

May 2016,
June 2016,
July 2016,
December 2016,
January 2017.

Further, Section 38 of the Residential Tenancy Policy Guideline states (in part):

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide 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.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

It is my finding therefore, that, since the rent has been late on more than the three occasions sufficient to justify the notice, I will not cancel this Notice to End Tenancy.

I do not agree with the tenant's argument that accepting a \$20.00 partial payment waives the landlord's right to end the tenancy for repeated late rent payments. The landlord may have agreed to not end the tenancy for nonpayment of rent with a 10 day notice; however that does not affect the landlord's right to give a one-month Notice to End Tenancy for repeated late rent payments.

This application to cancel the Notice to End Tenancy will therefore be dismissed. Section 55 of the Residential Tenancy Act states:

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 landlord's notice.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

As this tenancy is ending for repeatedly late rent payments, there is no need for me to make a finding on the other reasons listed on the Notice to End Tenancy.

Conclusion

I therefore dismiss this application without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, for 1:00 p.m. on March 31, 2017.

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 20, 2017

Residential Tenancy Branch