



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EUGENE PLACHTA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 6, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2014 as a month to month tenancy. Rent is \$830.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy. The Tenant said a move in condition inspection report was completed at the start of the tenancy.

The Landlord said he issued the 1 Month Notice to End Tenancy dated September 19, 2017 on September 19, 2017 in person to the Tenant. The Tenant said she remembers that the Notice was serviced on September 20, 2017. The Landlord continued to say that the Tenant has been repeatedly late with the rent payment 5 times. The Landlord said the Tenant’s evidence lists the late dates. The late rent payment dates are: November, 2016, July, 2016, June, 2016, February, 2016 and September 2017. The Landlord said it is his understanding if a Tenant is repeatedly late with the rent payment 3 times or more the Landlord has the right to end the tenancy. The Landlord said the Tenant has been late more than 3 times and he wants to end the tenancy.

The Tenant said she has only been late one time this year and that was because she had a change in roommates so she paid ½ the rent on September 3, 2017 and the balance later in September, 2017. The Tenant continued to say she has paid the rent on time and in full since November, 2016 so she does not believe the Landlord has grounds to evict her for repeatedly late with the rent payments. Further the Tenant said the Landlord has not provided any evidence to support the Notice to End Tenancy.

The Landlord said he did not think he had to provide evidence because the Tenant had provided the late rent payment dates. The Landlord continued to say he did send a letter to the Tenant in 2016 telling her that the rent must be paid on the 1st of each month. The Landlord said he did not submit this letter into evidence.

The Tenant said in closing she has been late only one time this year and the Landlord has not provided evidence to support the eviction Notice.

The Landlord said in closing the Tenant has been late more than 3 times and he did not know there was any time limit on the late rent payments so he would like to end the tenancy.

Analysis

Guideline #38 says:

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. 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.

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.

I have carefully reviewed the testimony and evidence submitted by the parties. Both parties agree the Tenant had late rent payments in November, July, June and February, 2016 and in September, 2017. Policy guideline #38 says that a Landlord who fails to act in a timely manner with regard to repeatedly late rent payments may lose this provision to end a tenancy. The Landlord issued a letter to the Tenant in 2016 about late rent payments and it appears the Tenant complied with the Landlord's request because the rent payments have been on time from November, 2016 to September, 2017. I find the 2016 late rent payments were addressed by the Landlord's letter of 2016 and are not material to the 2017 rent payments. Consequently the Tenant has been late with one rent payment in 2017 which does not meet the criteria of guideline #38 which says a minimum of 3 late rent payments are required to justify a Notice to End Tenancy. I find the Tenant has been late one time within a reasonable period of time from November, 2016 to December, 2017. Consequently I find the Tenant has established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated September 19, 2017 for repeatedly late rent payments. I cancel the 1 Month Notice to End Tenancy for Cause dated September 19, 2017.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated September 19, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: December 13, 2017.

Residential Tenancy Branch