



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 634 EAST GEORGIA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated September 26, 2017 be upheld or cancelled?

Background and Evidence

The tenancy started on September 7, 2016 for a fixed term of 3 months and then continued on a month to month basis thereafter. The tenant paid a security deposit of \$500.00 and a pet damage deposit of \$500.00. The tenant was required to pay rent of \$1,000.00 on the first day of every month. The landlord issued a Notice of Rent Increase in May 2017 with an effective date of September 1, 2017 to increase the monthly rent to \$1,037.00.

On September 26, 2017 the landlord posted a *1 Month Notice to End Tenancy for Cause* ("1 Month Notice") on the rental unit door. The 1 Month Notice has a stated effective date of October 31, 2017 and indicates the reason for ending the tenancy is: *Tenant is repeatedly late paying rent.* In the Details of Cause section of the 1 Month Notice, the landlord indicates the tenant has been consistently late paying rent despite issuance of a warning letter on May 4, 2017. The May 4, 2017 letter was included in

evidence and indicates that any further late payment of rent will result in issuance of a 1 Month Notice to End Tenancy for Cause.

The landlord submitted that the tenant was late paying rent again in the months of June 2017, July 2017, and August 2017 and failed to pay the rent increase on time for September 2017. The landlord provided copies of 10 Day Notices to End Tenancy for Unpaid Rent issued to the tenant for the months of: January 2017, May 2017, June 2017, August 2017 and September 2017, including Proof of Service documents for each of the 10 Day Notices. The landlord also pointed out and provided a copy of a warning letter issued to the tenant in January 2017 concerning late payment of rent.

The tenant did not dispute any of the facts or evidence put forth by the landlord. The tenant requested a second chance. The tenant explained that she receives rent money from a third party and that sometimes the cheque is received by her on the weekend which results in her paying rent to the landlord late. The tenant indicated she would try to find a better way to ensure rent is paid to the landlord on time if the tenancy were to continue. The landlord was not agreeable to continuation of the tenancy since the tenant was given the benefit of two warning letters and the landlord issued six 10 Day Notices to End tenancy to the tenant in 2017 which creates a lot of work for the landlord and indicates to the landlord that paying rent on time is not a priority for the tenant. The landlord also indicated that in posting a Notice to End Tenancy on the tenant's door the tenant became angry with the landlord's agent.

In recognition that the landlord received rent for the month of December 2017 the landlord requested an Order of Possession that is effective on December 31, 2017.

Analysis

Under section 26 of the Act, a tenant must pay rent when due under the terms of their tenancy agreement. Section 47(1)(b) of the Act provides that a landlord may end a tenancy where a tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline 38: *Repeated Late Payment of Rent* provides, in part: "Three late payments are the minimum number sufficient to justify a notice under these provisions."

In this case, it is undisputed that the tenant has paid rent more than three times during the tenancy and I am satisfied the landlord had cause to issue the 1 Month Notice that is before me. I do note; however, that the landlord was pre-mature in increasing the rent effective September 1, 2017 since the rent was first established on September 7, 2016 and a rent increase may not be imposed for at least 12 months after the rent was

established, as provided under section 42 of the Act. Accordingly, the rent increase could not have been effective any earlier than October 1, 2017 and I do not consider the September 2017 rent to have been paid late. However, there were multiple late payments of rent prior to September 2017 and even if I ignore the month of September 2017 I remain satisfied that there were sufficient grounds to end the tenancy for repeated late payment of rent.

Upon review of the Notice I am satisfied that it is in the approved form and is duly completed.

In light of the above, I uphold the Notice and I dismiss the tenant's request that I cancel it.

Section 55 of the Ac provides that I must provide an Order of Possession to the landlord in certain circumstances. Section 55(1) provides:

Order of possession for the landlord

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.

Having been satisfied the Notice to End Tenancy meets the form and content requirements of the Act and having upheld the Notice to End Tenancy in this case, I find the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession. As requested, I provide the landlord with an Order of Possession effective at 1:00 p.m. on December 31, 2017.

For reasons explained above with respect to the pre-mature effective date of the Notice of Rent Increase, pursuant to my authority under section 62 of the Act, I order the landlord to adjust the tenant's ledger to reflect a rent obligation of \$1,000.00 for the month of September 2017. I further order that if the tenant paid rent in excess of

\$1,000.00 for the month of September 2017 that the landlord repay the tenant the overpayment.

Conclusion

The Notice to End Tenancy issued on September 26, 2017 is upheld and the landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2017.

I have ordered the landlord to adjust the tenant's ledger to reflect a rent obligation of \$1,000.00 for the month of September 2017 since the Notice of Rent Increase had a premature effective date and I further ordered that if the tenant paid more than \$1,000.00 in rent for September 2017 the landlord must repay the overpayment to the tenant.

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