



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated December 12, 2017 and an order to recover the cost of the filing fee..

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on December 12, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on December 27, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated December 12, 2017 and to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on October 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent on the first day of each month. The present rent is \$721 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$337.50 at the start of the tenancy.

The landlord testified the tenant has been late paying the rent on 6 or 7 occasions since the start of the tenancy. Her records indicate he paid the rent late and a 10 day Notice to End Tenancy was served on the Tenant for January, 2016, June 2016, August 2016,

January 2017 and June 2017. She testified her receipt book indicates the tenant paid the rent for December 2017 on December 1, 2017.

On December 2, 2017 the landlord gave the tenant a Caution Letter indicating that his rent was paid late and that any future late payments by you would leave me with no alternative but to serve a one month Notice to End Tenancy in accordance with section 36(1)(h) of the Residential Tenancy Act (the section number is no longer accurate). .

On December 14, 2017 the landlord served a one month Notice to End Tenancy for repeated late payment of rent.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent

Policy Guideline 38 provides as follows:

“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.

Analysis:

I accept the evidence of the landlord that the rent is due on the first of the month and the Tenant has been late on more than 3 occasions. Normally this would be sufficient basis to end the tenancy.

However, the landlord represented to the Tenant in the Caution Letter of December 2, 2017 that the landlord would take steps to end the tenancy if there was any further late payment of rent. No further late payments were made by the Tenant after that date. The tenant relied on the provisions of the Caution letter. I determined the landlord has failed to establish sufficient grounds to end the tenancy where the landlord has given a Caution Letter but fails to live up to the terms of that letter.

As a result I ordered that the one month Notice to End Tenancy dated December 14, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's claim to recover the cost of the filing fee as the tenant's late payment precipitated this situation.

This decision is final and binding on the parties.

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: February 15, 2018

Residential Tenancy Branch