



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a One Month Notice to End Tenancy for Cause.

The Landlord and Tenant both appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted and also properly served.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issue to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Residential Tenancy Act (“Act”)?

Background and Evidence

The tenancy began in 2017 with the Tenant and her boyfriend listed as renters, and later continued only with the Tenant as of this year; monthly rent was set at \$900.00 per month, payable on the first of each month. The Tenant has asked the Landlord for a copy of the tenancy agreement, but he has been unable to locate it.

The Landlord served a One Month Notice to End Tenancy for Cause dated June 9, 2018 with the reason noted as being "Tenant is repeatedly late paying rent". The Landlord apparently indicated the wrong date and confirmed in his testimony that this notice was actually served on May 9, 2018, with a stated effective date of June 9, 2018. The Tenant denies that she is repeatedly late with her rent and she disputed the notice on May 9, 2018, within the timelines required. The Tenant filed several receipts showing payments made on time for October, November, December, January, March, and April. She stated that she recalls being a few days late in May and cannot recall if payment was on time for June. She has the July rent ready for payment pending the outcome of this dispute.

The Landlord requires cash payment for the rent each month. He states that he provided written receipts dated the 1st of each month even when the Tenant is a few days late with her rent. He states that she started becoming late with rent once the Tenant's boyfriend vacated the premises. He claims she was late in April, March and May of 2018, which led to the Notice to End Tenancy.

Analysis

Under section 47 of the Act, a landlord may end a tenancy with one month's notice if a tenant is repeatedly late with rent. Under Policy Guideline 38, three late payments in the past year are the minimum number sufficient to justify a notice under these provisions. An arbitrator may consider exceptional circumstances, such as a bank error which delays payment, in determining whether or not a tenant is repeatedly late with rent payments.

The Notice to End Tenancy must meet the requirements of section 52 of the Act in form and content; I find that although there was some discrepancy in the date which the Landlord signed the form, it met those requirements. The effective date of June 9th is automatically corrected as per the Act to be June 30th, 2018, as this is the last day of the following month of the notice.

As for the validity of the notice, the Landlord has the burden of proving that the cash rent payments were routinely late. I find that the Landlord has failed to provide sufficient evidence of at least three late rent payments leading up to the service of the Notice to End Tenancy. Although he testified that April, March and May rent was late, from my review of the evidence, I find only May rent was late; the Tenant has receipts provided by the Landlord showing the other months were paid as of the due date. I will not consider the rent payments after May, as I must consider the facts as they exist at the time the notice is provided.

Accordingly, the Landlord's Notice to End Tenancy is hereby cancelled and of no force or effect. The tenancy shall continue until terminated with proper notice by either party. The Landlord and Tenant are reminded that if cash payments for rent are to be made, the Landlord must be available to accept payment on the due date and provide a properly dated receipt at the time of payment.

Conclusion

The Landlord's Notice to End Tenancy for Cause is hereby cancelled and of no force or effect; the tenancy shall continue until terminated by either party with proper notice.

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: July 05, 2018

Residential Tenancy Branch