



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that sometime in September of 2018 the Dispute Resolution Package was served to the Landlord, via registered mail. The Landlord stated that these documents were delivered by a courier sometime in September of 2018. As the Landlord acknowledged receiving these documents, I find that they were served sometime in September in accordance with section 71(b) of the *Residential Tenancy Act (Act)*.

On October 04, 2018 the Landlord submitted 17 pages of evidence to the Residential Tenancy Branch. She stated that a copy of the Notice to End Tenancy for Cause that is the subject of these proceedings was not included in this evidence package. The Landlord stated that her brother personally served this evidence to one of the Tenants on October 05, 2018. The Tenant stated that these documents were served to the female Tenant on October 05, 2018. As the Tenant acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

On September 07, 2018 the Tenant submitted a copy of the Notice to End Tenancy for Cause that is the subject of these proceedings to the Residential Tenancy Branch. The Tenant stated that he does not think that he served this document to the Landlord. As the document was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that the Tenants are currently required to pay rent of \$500.00. The parties agree that rent was originally due by the first day of each month and that approximately one year ago the parties agreed that rent would be due by the 20th day of each month.

The Landlord and the Tenant agree a One Month Notice to End Tenancy for Cause was personally served to one of the Tenants on August 29, 2018, which declared that the Tenants must vacate the rental unit by September 30, 2018. The parties agree that the reasons cited for ending the tenancy on the Notice to End Tenancy are that the tenant has been repeatedly late paying rent and the Tenant has allowed an unreasonable number of occupants in the unit.

The Landlord and the Tenant agree that:

- rent of \$500.00 was paid for August of 2018 on September 20, 2018;
- rent of \$500.00 was paid for September of 2018 on September 26, 2018;
- rent of \$500.00 was paid for June of 2018 and rent of \$200.00 was paid for July of 2018 on August 01, 2018;
- rent of \$300.00 was paid for July of 2018 on July 20, 2018; and
- rent of \$500.00 was paid for May of 2018 on June 20, 2018.

Analysis

On the basis of the undisputed evidence I find that the Landlord served the Tenants with a One Month Notice to End Tenancy, pursuant to sections 47(1)(b) and 47(1)(c) of the *Act*.

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 stipulates, in part, that:

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.

On the basis of the undisputed evidence that the rent has not been paid on time since May of 2018, I find that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*.

As I have found that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*, I find that I do not also need to determine if the Landlord has the right to end this tenancy pursuant to section 47(1)(c) of the *Act*.

As I have found that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*, I dismiss the Tenants’ application to set aside the One Month Notice to End Tenancy for Cause that was served to them on August 29, 2018.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*] and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Landlord did not submit a copy of the One Month Notice to End Tenancy for Cause that was served on August 29, 2018 and the copy that the Tenants submitted to the Residential Tenancy Branch was not accepted as evidence for these proceedings, I am prohibited from viewing that document during this adjudication. As I am prohibited from viewing the One Month Notice to End Tenancy, I am unable to conclude that it complies with section 52 of the *Act*. As I am unable to conclude that the Notice complies with section 52 of the *Act*, I am unable to grant an Order of Possession pursuant to section 55(1) of the *Act*.

The Landlord retains the right to file an Application for Dispute Resolution seeking an Order of Possession if the Tenants do not vacate the rental unit on a date specified by the Landlord.

Conclusion

The Tenants' application to set aside the One Month Notice to End Tenancy for Cause that was served on August 29, 2018 is dismissed. This Notice remains in full force and the Tenants must vacate the rental unit on the basis of that 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: October 26, 2018

Residential Tenancy Branch