



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. One of the tenants also attended and gave affirmed testimony, and represented the other tenant. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and specifically for repeated late rent?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 29, 2018 and expires on April 29, 2019, and the tenants still reside in the rental unit. Rent in the amount of \$1,650.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00 as well as a pet damage deposit in the amount of \$825.00, both of which are still held in trust by the landlord. The rental unit is an apartment

in a complex, and neither the landlord nor the landlord's agent resides in the complex. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the landlord was out of the Country and returned about mid-July, and the landlord's agent was not representing him at that time. However, while travelling, it was not convenient for the landlord to be paid by post-dated cheque, and asked the tenants to pay by e-transfer.

The tenants were late with rent for the months of June, August and September, 2018. Rent is paid by e-transfer, and copies of some have been provided for this hearing. On May 2, 2018 the tenants paid half of the rent, but the landlord's agent doesn't know when the other half was paid. Another payment of half a month's rent was made on June 22, 2018, and the landlord's agent is not sure if that was the other half of May's rent or the first half of June's rent. The notation on the e-transfer states: "Sixth attempt May Rent." Another half month's rent was paid on June 23, 2018. In July, half of the rent was paid on July 1 and the other half on July 2, 2018. August's rent was also paid in 2 installments on August 3 and August 5, as well as September's rent on September 8 and September 9, 2018.

The landlord's agent served the tenants with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on September 10, 2018. A copy has been provided for this hearing and it is dated September 10, 2018 and contains an effective date of vacancy of October 31, 2018. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The tenant testified that she was under the assumption that sending the rent in 2 payments was okay, and that if it wasn't, the tenants would have given the landlord post-dated cheques. However, at the beginning of the tenancy the landlord said he would prefer e-transfers.

The e-transfer system was down for almost all of June, 2018 according to the tenant's bank. It was a huge issue and the bank eventually forced the payment through. The tenant also found out that she could only send a maximum of \$1,000.00 at a time, and the landlord agreed to 2 payments. When the tenant asked about post-dated cheques again, the landlord ignored the suggestion. The landlord also ignored multiple messages, phone calls and emails from the other tenant, who is the tenant's mother-in-law.

The tenant also testified that payment was to be received from the tenant's spouse from whom the tenant escaped violence, and that payment was to be made by the lawyers, but never arrived.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing a One Month Notice to End Tenancy for Cause is in dispute.

I refer to Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent which specifies that three late payments are the minimum number to justify ending a tenancy for repeated late rent. It also states: “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.”

I have reviewed all of the evidentiary material, including text messages and copies of the e-transfers. The tenant testified that one of the month’s rent payments was to be paid by the tenant’s spouse through lawyers, but that didn’t happen. I also note that in one of the e-transfers, a message from the tenant indicates that the payment was late because she was camping and had no reception. It is clear that the tenants have been late with rent for three months, and the landlord had cause to issue the notice to end the tenancy.

The tenants’ application to cancel the One Month Notice to End Tenancy for Cause is dismissed.

Since the tenants have not been successful with the application the tenants are not entitled to recovery of the filing fee.

The *Residential Tenancy Act* states that where I dismiss a tenant’s application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in the One Month Notice to End Tenancy for Cause is the date of writing this Decision, I grant the Order of Possession effective on 2 days notice to the tenants.

Conclusion

For the reasons set out above, the tenants’ application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 31, 2018

Residential Tenancy Branch