



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 March 27, 2019

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 Notice to End Tenancy was personally served on the Tenant on March 27, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord on by mailing, by registered mail to where the landlord carries on a business on April 1, 2019. 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 March 27, 2019?

Background and Evidence:

The tenancy in the rental property began on July 2017. The tenant moved to the rental unit in question on July 28, 2018. February 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent

The tenant has paid the rent late every month since he moved into this rental unit at the end of July 2018.

The tenant testified as follows:

- He is a single father and is on disability. He further testified that because of ill health and employment issues he has not been able to pay the rent on time.
- He explained this to J (the landlord's agent) at the start of the tenancy. She told him that it was okay to pay the rent late given his personal situation provided he did not fall into arrears of more than one month.
- The tenant testified he has recently been approved for a disability payment from the government of \$1235 per month. He will be to pay the rent prior to the due date in the future.

The landlord testified she was not prepared to reinstate the tenancy. She further testified she talked to J and J advised her that she agreed to that particular late payment, not that it was okay to pay the rent late indefinitely in the future. J did not appear at the hearing to testify. I gave the landlord an opportunity to phone J to get her to call in. The landlord testified she made 3 attempts to phone J but she did not answer.

The landlord testified the tenant is arrears of \$700. The tenant testified he has received 2 tenant's ledger. One indicates \$700 is owed and the other indicates he is current and no money is owed.

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:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- I determined that the tenant has paid the rent late every month since he moved into this rental unit at the end of July 2018.
- However, I determined in the absence of testimony from J that the landlord agreed with the Tenant that given his personal situation he would be permitted to pay the rent late and not bring his tenancy to an end provided he did not fall into arrears of more than one month.
- J did not appear at the hearing to give oral testimony. While the Act permits an arbitrator to accept hearsay evidence (the landlord testified J told her that it was for one month only) little weight can be given to it in the absence of affirmed testimony of the other party. The result might have been different had the landlord presented evidence from J at the hearing.
- I do not accept the submission that I should infer that J did not agree that the tenant could pay the rent late indefinitely in the future from the service of a several 10 day Notices to End Tenancy on the Tenant. In the circumstances the service of a 10 day Notice to End Tenancy is consistent with an explanation that the landlord wanted to ensure a quicker end of the tenancy if the tenant fell into arrears of more than one month.

- In the absence of evidence from J I accept the testimony of the Tenant and I determined the landlord agreed to waive its legal rights to enforce the obligation of paying the rent of the due date.
- I determine that whatever was said by J, it is clear that the landlord is no longer prepared to accept late payments for whatever reason. Thus if the tenant fails to pay the rent on time on more than 3 occasions in the future the landlord has the right to serve a one month Notice to End tenancy for repeated late payment. The tenant should be aware that it is a late payment even if he paid the rent on time for a future month if the tenant has not paid off the arrears and brought the tenancy into good standing.

Determination and Orders:

I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated March 27, 2019 for repeated late payment be cancelled. The tenancy shall continue with the rights and obligation of the parties remaining unchanged.

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: May 16, 2019

Residential Tenancy Branch