



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 28, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary issue

At the outset of the hearing, it was determined that the second reason stated in the Notice, that the tenant caused damage due to illegal activity is not correct. The landlord stated it was for damages, not done from illegal activity. As the correct reason was not listed, I find it not necessary to consider the second reason stated in the Notice.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2015. Current rent in the amount of \$875.00 was payable on the first of each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2019.

The reason stated in the Notice was that the tenant has:

- Repeated late payments of rent;

The landlord testified that the tenant has been late pay rent on the following dates. January 2019, rent was paid on January 2, 2019, October 2018, rent was paid on October 3, 2018, and August 2018 was late.

The tenant testified that rent for January 2019, was paid on the 2nd of January 2019, due to the holidays.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Repeated late payments of rent.

Residential Tenancy Policy Guideline 38, defines late payment of rent.

The *Residential Tenancy Act* provides 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.

Although I accept there have been three late payments, I find the landlord did not act in a timely manner after the most recent late payment. The last late payment of rent was on January 2, 2019 and the tenant was not served with the Notice until May 28, 2019. I find that is an unreasonable delay. I find it would be unreasonable to end the tenant on the issue of late payments of rent, since rent has been no late payments since January 2019. Therefore, I grant the tenant’s application to cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

I caution the tenant that they must pay their rent on or before the 1st of each month. Should the first day of the month be a statutory holiday, it is the tenant’s responsibility to ensure rent is paid prior to the first as indicated in the tenancy agreement.

In this case, I did not consider the second reason in the Notice, as indicated in the preliminary issues. However, the tenant has acknowledged that they have caused damage.

The parties agreed that the tenant will make the repair to the hallway wall and replace the broken door, no later than September 30, 2019. Therefore, I find it appropriate to make the following order.

I Order, pursuant to section 32, and 62 of the Act, that the tenant is to make the above repairs no later than September 30, 2019. Should the tenant not comply with my Order the landlord may have ground to end the tenancy for failure to comply with an Order of the Director.

The parties further agreed that the landlord or someone on behalf of the landlord will attend to the tenant's rental unit to install a door stop on July 17, 2019, at 9:00am.

In this case, I decline to award the filing fee. The landlord's Notice had merit of late payments of rent. The Notice was simply cancelled because the landlord did not act in a timely matter to issue the Notice. Further, the tenant had caused damage, to the wall and door and because the landlord had indicated in the Notice that this was caused by illegal activity, which it was not, that I did not consider this portion of the Notice.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue

The tenant is ordered to make repairs to the hallway wall and door no later than September 30, 2019.

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 15, 2019

Residential Tenancy Branch