



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a Notice to End Tenancy for Cause. Both parties attended the hearing and had opportunity to be heard. The parties agreed to having been served with the evidence of the other party.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on September 01, 2020. The rent is \$1,350.00 due on the first of the month.

On February 02, 2023, the landlord served the tenant with a Notice to End Tenancy for Cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reason;

- Tenant is repeatedly late paying rent

The landlord stated that the tenant has paid rent late multiple times since the start of tenancy. The landlord filed proof of late payments for every month in 2022 and January and February 2023.

The tenant agreed that she did not pay full rent on the day it is due because there is a limit of \$3,000.00 to send money by etransfer. The tenant stated that she would send rent in two installments of \$3,000.00 and \$500.00, which had to be at least 24 hours apart.

The tenant admitted that she rarely paid rent on the first of the month and did so mostly on the 2nd and 3rd of each month. She stated that the landlord agreed to accept rent by e-transfer and accepted rent on the dates she sent it without notifying her that late rent was not acceptable. The tenant stated that based on the landlord's actions of accepting rent a couple of days late for 14 consecutive months, led her to believe that he did not mind her paying rent on the 2nd or 3rd of the month. The tenant stated that after she received the Notice to End Tenancy for Cause (late payment of rent), she started paying rent on the 1st of each month.

The landlord agreed that he accepted late rent without complaint for 14 months before he gave her the Notice to End Tenancy for Cause. The landlord also stated that this was not the only reason for wanting the tenancy to end and that there were several other ongoing issues with the tenancy.

An attempt was made to mediate an agreement, which was unsuccessful as the parties could not agree on a date to end tenancy.

Analysis

In order to support the Notice to End Tenancy for Cause, the landlord must prove that the reason for the notice to end tenancy applies.

Based on the testimony of both parties, I find that the tenant was late paying rent on several occasions since the start of tenancy (September 2020). I further find that the landlord accepted late rent and continued to do so for the whole of 2022 and the first two months of 2023 which led the tenant to believe that it was acceptable to pay rent late. The landlord agreed that he did not provide the tenant with any warnings about late payments.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. However, I find that by not issuing a warning or a Notice to End Tenancy for Cause for 14 months of late payments of rent, I accept the tenant's testimony that she assumed that the landlord did not mind receiving rent late.

Implied consent is **consent which is not expressly granted by a person**, but rather implicitly granted by a person's actions and the facts and circumstances of a particular situation (or in some cases, by a person's silence or inaction).

By accepting 14 late payments without taking action against the tenant and without notifying the tenant that it was not ok to pay rent late, I find that the landlord implied consent of late payments of rent.

Therefore, I find that the landlord has not proven the reason to end the tenancy for cause and accordingly, I must set this notice aside.

The landlord is at liberty to serve another notice to end tenancy for future late payments of rent.

Conclusion

The Notice to End Tenancy for Cause is set aside, and the tenancy will continue.

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: June 02, 2023

Residential Tenancy Branch