



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

CNC & FF

Introduction

This hearing dealt with an application by the tenants disputing a one month Notice to End Tenancy for cause. Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue to be Determined

Is the one month Notice to End Tenancy for cause valid?

Background and Evidence

This tenancy began on December 1, 2007 for the monthly rent of \$700.00. The tenants were to pay a security deposit of \$350.00 however this was never paid.

On April 11, 2009 the landlord served the tenants a one month Notice to End Tenancy for cause on the basis that the tenants were repeatedly late paying rent and failed to pay the security deposit. The tenants filed to dispute the notice on April 16, 2009.

Analysis and Findings

The tenants' application is granted and the one month Notice to End Tenancy is set aside and the tenancy will continue with full force and effect.

As discussed in the hearing, the landlord has failed to establish that the tenants were repeatedly late paying rent. The landlord could only provide one example when the rent was late, which is not sufficient evidence to support the end of the tenancy. The landlord also acknowledged that she has agreed to late payment of rent previously. It was acknowledge by the landlord and the tenants during the hearing that late payment of rent will no longer be accepted and that the landlord fully intends to exercise her right under the law to serve the tenants with notice if the rent is paid late.

I also note that the landlord was seeking to end the tenancy on the basis that the tenants failed to pay the security deposit. I find that this is not sufficient grounds to end the tenancy because almost a year and a half has past since the tenants were required to pay a security deposit. Although the *Act* does allow for the landlord to end a tenancy if the security deposit is not paid, the enforcement of this, as a material term of the

tenancy agreement, is at the beginning of the tenancy. I find that the landlord has waived the requirement for the tenants to pay a security deposit. I also note that the landlord failed to fill out the one month Notice to End Tenancy to reflect the breach of not paying the security deposit. However, even though no security deposit was issued this does not exclude the tenants from their obligation to properly care for and maintain the rental unit and to return the rental unit in a clean and undamaged condition at the end of the tenancy.

Conclusion

The tenants' application is granted and I have set aside the one month Notice to End Tenancy for cause. This tenancy will continue with full force and effect. The tenants may recover the \$50.00 filing fee paid for this application by deducting it from the amount owed for their next month's rent.

Dated June 03, 2009.

Dispute Resolution Officer