



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End Tenancy for cause and a Monetary Order to recover the filing fee.

The tenants served the landlord in person on September 09, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- If not is the landlord entitled to an order of possession based on the notice issued on August 30, 2009?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



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Background and Evidence

This tenancy started on August 01, 2007. The tenants pay rent bi-weekly of \$311.50. This is a month to month tenancy. The tenants paid a security deposit of \$315.00 on July 27, 2007.

The tenants testify that the landlord issued a One Month Notice to End Tenancy for cause stating the tenant is repeatedly late paying their rent. The tenants dispute this. They testify they have been late on occasion when they have been unable to get hold of the landlord to pay their rent when it is due. As they pay by cash they are reluctant to leave this in the landlords' mail box when she is not at home. The other times they have been late is when one of the tenants EI or wage cheques payments are late.

The tenant claim they asked the landlord to change the bi-weekly rent payment schedule to fall in line with their wage payment schedule. The landlord refused to do this and this has made them late with their rent. The tenants agree that rent was due on October 16, 2009 and they have asked if they can pay this rent today (October 23) and then another weeks rent to bring them into line with their wage schedule.

The landlord claims the tenants have often been late with their rent payments In November 2008 she issued the tenants with a 10 day notice for unpaid rent. At that time there was \$565.00 outstanding. She states the tenants paid \$500.00 of the outstanding amount on the day the notice was issued and the remainder the next day. In December 2008 the tenants paid rent by cheque which came back as insufficient funds. Since January 2009 to today's date the tenants have been late nine times with their rent payments. The landlord is reluctant to take a cheque from the tenants due to the December cheque which was returned.



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The landlord is unwilling to change the tenant's payment schedule as she feels they will still pay their rent late. The landlord confirms a One month Notice was issued to the tenants and requests an Order of Possession to take effect on December 31, 2009.

Analysis

Both parties agree that the tenancy agreement states that rent is due on a bi-weekly period. Section 14 of the Act states that a tenancy agreement may only be amended to change or remove a standard term if both the landlord and tenant agree to the amendment. As the landlord does not agree to amend the tenancy agreement I find the tenants may not change the terms of the agreement.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement.... As the landlord has provided sufficient evidence to support the reasons given on the One Month Notice to End Tenancy dated August 30, 2009, I find the tenants are unable to cancel this notice and their application is dismissed.

As the tenants have been unsuccessful in this matter I find they must bear the cost of filing their application

The landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

The Tenant's application is dismissed. The One Month Notice to End Tenancy for Cause dated August 30, 2009 will remain in force and effect with an amended date to vacate the rental unit.



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I HEREBY ISSUE an Order of Possession in favour of the landlord effective on or before December 31, 2009. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 23, 2009.

Dispute Resolution Officer