Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Neither party made written submissions.

Preliminary Matters

The parties were each asked to submit their copies of the Notice issued on August 7, 2012, plus a copy of the tenancy agreement. I explained that if only 1 party made a submission I would consider that evidence alone.

The landlord and tenant each supplied a copy of the tenancy agreement, signed by the parties and a copy of the 1 Month Notice to End Tenancy that was issued on August 7, 2012.

The tenant applied requesting more time to dispute the Notice; however, the tenant applied to dispute the Notice on the 9th day after service; therefore an extension of time was not required.

Issue(s) to be Decided

Does the landlord have sufficient cause to end the tenancy for the reasons indicated on the Notice?

Is the tenant entitled to recover the filing fee costs?

Background and Evidence

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants; neither party submitted a copy of the Notice and the tenant could not be sure of the details of the Notice, as she did not have her copy with her during the hearing. This is addressed under preliminary matters, above.

The landlord testified that the Notice was issued on August 7, 2012 and that it required the tenants to vacate the rental unit on September 7, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have been repeatedly late paying rent and tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenancy commenced on May 1, 2012, rent is $730.00 per month, due on the first day of each month. A copy of the tenancy agreement supplied by the landlord indicated that the tenant present at the hearing is a co-tenant with her 2 sons. Each of the 3 co-tenants signed the tenancy agreement on April 1, 2012.

The tenant agreed that in May, 2012 the first rent cheque was returned as insufficient funds and that May rent was then paid by cash after the 1 day of the month. All rent payments are now made by cash and receipts are issued by the landlord.

The tenant did not dispute the landlord's submission that rent was paid late in May, July and August, 2012. The tenant's sons make separate payments to the landlord and did not do so by the first day of each month. July rent was paid in full by the 7th and Augusts' rent was not paid in full until the 3rd.

The landlord also issued the Notice to end tenancy as a result of on-going problems with the 2 male co-tenants. There was no dispute that multiple disturbances have occurred that have resulted in complaints by other occupants of the 18 unit building and multiple police calls to the rental unit. The landlord is now afraid of the 2 male co-tenants.

Analysis

The copies of the tenancy agreement submitted as evidence were signed by the 3 co-tenants on April 1, 2012. A copy of the 1 Month Notice to End Tenancy for Cause, issued on August 7, 2012, was also supplied. This Notice aligned with the testimony given by each party during the hearing.

As each of the 3 occupants signed the tenancy agreement they are considered co-tenants, so they are jointly liable for any issues that arise during the tenancy.

The Notice issued on August 7, 2012, required the tenants to vacate the rental unit on September 7, 2012.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed from September 7, 2012 to September 30, 2012.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have repeatedly paid rent late. There is no doubt that the 2 adult male co-tenants are causing disturbances, but I have found that the Notice to end tenancy is effective based on the first reason given; repeated late rent payments.

Residential Tenancy Branch policy suggests that 3 late payments are the minimum number sufficient to justify a Notice ending tenancy. The late payments do not need to be consecutive; they only must be considered as repeatedly late. A landlord who does not act in a timely manner after the most recent late payment could be determined to have waived the reliance on this provision of the Act. I find this to be a reasonable stance.

The landlord has received rent payments on the day they are due 2 out of 5 months of this tenancy. The 3 late rent payments made in May, July and August resulted in the landlord taking steps that I find are supported by section 47(1)(b) of the Act. Therefore, the tenant will end effective September 30, 2012.

Conclusion

I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(b) of the Act. I find that the 1 Month Notice to End Tenancy for Cause, issued on August 7, 2012, is of full force and effect. The tenancy is to end on September 30, 2012.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 21, 2012.

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Residential Tenancy Branch