



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession for cause and to recovery the filing fee for the cost of making the Application. An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing.

The Landlord’s agent testified that she had served a copy of the Application and the Notice of Hearing documents to the Tenant seven days after they had been issued to the Landlord by the Residential Tenancy Branch for service on the Tenant.

Section 59(3) of the Act provides that an applicant making an Application must serve a copy of the application and Notice of hearing documents to the respondent within three days of receiving the paperwork from the Residential Tenancy Branch. As a result, I explained to the Landlord that I was unable to proceed with the Application but I would give the Landlord leave to re-apply.

The Landlord’s agent and Tenant proceeded to have a discussion based on the notice to end tenancy for cause for repeatedly late payments (a copy of which had not been provided for this hearing by any of the parties). During the discussion it was determined that the Tenant had a pattern of paying her rent repeatedly late.

The Tenant submitted that she was going through medical treatment for cancer and that her rent payable date for the first day of each month sometimes fell on a holiday when the banks were closed or she was not paid wages on the first day of each month.

The Tenant was cautioned about her obligations to pay rent on time under her tenancy pursuant to section 26(1) of the Act and that payment of rent can be made at any time before it is due to avoid days where the first day falls on a bank closure day.

The Landlord's agent indicated that they were willing to continue the tenancy with the Tenant providing that she pay her rent in accordance with their agreement. The parties agreed that the tenancy had started 17 years ago and even though no security deposit was requested or paid at the start of the tenancy, rent in the amount of \$262.00 is payable by the Tenant on or before the first day of each month.

The Tenant committed to making her rent payments on time under her current tenancy agreement. However, the Tenant and Landlord were willing to work with each other on changing the day rent is due which would be more conducive to the Tenant's ability to make rent payments on time. If the Landlord and Tenant agree to such a change in the rent due date, then this should be documented on a tenancy agreement.

However, the Landlord is still at liberty to make an Application regarding the notice to end tenancy already issued to the Tenant for which this Application was dismissed with leave to re-apply. If the Landlord decides to continue the tenancy or the tenancy is re-instated then the Tenant is put on notice that any further late rent payments in accordance with the tenancy could put her tenancy at risk of being ended by the Landlord after being issued with another notice to end tenancy for repeatedly late rent payments.

Conclusion

For the above reasons, the Landlord's Application is dismissed with leave to re-apply. However, this does not extend any applicable time limits under the Act and I have made no findings of fact or law with respect to the merits of this Application, although I encourage the parties to take note of the points mentioned above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 09, 2014

Residential Tenancy Branch

