



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKIRCOAT INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- An order that the landlord perform repairs pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was primarily represented by its agent BJ (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find that each party was served with the materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to perform repairs to the rental unit?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in September, 2017. The current monthly rent is \$2,398.00 payable on the first of each month.

The landlord issued a 1 Month Notice dated August 14, 2019 indicating the reason for this tenancy to end as the tenant has been repeatedly late paying rent. The landlord

submitted into evidence the tenant ledger showing late payments in January, May and July, 2018, and January and August, 2019. The tenant confirmed that rent was paid late on those months.

The tenant seeks an order that the landlord perform repairs to the clothes washer/dryer in the rental unit. The tenant provided copies of correspondence with the landlord showing the request made and the landlord's acknowledgement. The landlord testified that they have authorized the tenant to contact a third party to schedule repairs at their convenience. The landlord confirmed that they would be responsible for payment for repairs or replacement of the appliances.

The parties also gave evidence regarding an outstanding arrear for a fine levied by the building's strata corporation. The parties discussed the tenants' attempt to dispute the strata fine and their agreement to pay the landlord the amount of the fine.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants have been repeatedly late paying rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. The Guideline further elaborates that if the late payments are far apart it may be determined that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

I accept the undisputed evidence of the parties that there have been a number of late payments throughout this 3-year tenancy. However, I find that these late payments occur infrequently, with several months between the instances. There have been only 2 late payments during the previous 12 month period. Under the circumstances I find that these late payments do not constitute a pattern that could be characterized as "repeatedly" late but are occasional aberrations from the norm. As such, I find that

there is insufficient evidence that the tenants' can be characterized as being repeatedly late in paying rent and consequently allow the tenants' application to cancel the 1 Month Notice.

I note parenthetically that the tenants have an obligation to pay the full rent owing when it is due in accordance with section 26 of the Act and they are well advised to maintain timely payments or the landlord may have cause to issue subsequent Notices to End Tenancy.

As the parties gave evidence that the landlord has provided the tenants with the means to contact a third party to inspect and perform repairs to the rental unit I find it unnecessary to issue an Order regarding repairs.

Conclusion

The tenants' application to cancel the 1 Month Notice is granted. The 1 Month Notice is of no further force or effect and this tenancy continues until ended in accordance with the *Act*.

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 22, 2019

Residential Tenancy Branch