



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION and ORDER

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy issued for cause, alleging repeated late payment of rent (the "Notice").

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

This tenancy began in the spring of 2001. There was no written tenancy agreement.

Although it was not relevant to the cause given in the Notice, the Landlords submitted evidence of various parties sharing the rental unit with the Tenant over time from the beginning of the tenancy to the present date without permission from the Landlords.

The relevant evidence presented by the Landlords did include numerous receipts from over the past several months indicating the Tenant had paid rent late on more than three occasions. In fact, it appears the Tenant has paid the rent late each month since December of 2008. The Landlords also presented evidence that one of them were retiring and it has become important that they receive their rent payment on time.

The Tenant explained that she had an oral agreement with the Landlords whereby she could pay the rent late or in instalments over the month. She testified that the Landlords had never complained about her paying the rent late, and that the first indication she had from them that they were now insisting the rent be paid on the first of the month was when she received the Notice.

The Tenant asserted that the Landlords allowed the pattern of repeated late payment of rent. She testified that they were very good Landlords and that the relationship with them had always been respectful.

The Landlords agreed they had not insisted that the rent be paid on the first of the month. One of the Landlords testified he would sometimes mention to the Tenant that the rent was late.

The Landlords had given one prior Notice to End Tenancy to the Tenant, sometime in 2002, however, that Notice to End Tenancy did not involve late payment of rent.

Analysis

I find the legal principle of 'estoppel' applies to this Application.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In other words, the Landlords established a pattern of accepting late rent payments from the Tenant and the Tenant relied on the pattern to continue to make late payments.

The Landlords may not now try to strictly enforce their right to being paid on time without giving some notice to the Tenant that they wish to strictly enforce the payment of rent on time.

Therefore, I find and Order that the Notice must be cancelled.

Nevertheless, I also explained to the Tenant that the Landlords have made it clear through this Notice and their actions that they now wish to strictly enforce their right to receiving the rent payment on time, on the first day of the month.

The Tenant is cautioned that this should be considered "one last chance", and another instance of late payment of rent would allow the Landlords to apply for an Order of Possession to end the tenancy, or to issue another Notice to End Tenancy.



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Conclusion

The Notice to End Tenancy is cancelled. The doctrine of estoppel applies to the Landlords' pattern of accepting late rent, without holding the Tenant to the strict terms of paying the rent on time, on the first day of the month.

It has now been made clear by the Landlords that the Tenant must pay her rent on time, on the first day of the month. The Tenant is cautioned that this may be her last chance and she must pay her rent on time.

As the Tenant has been successful in this Application, she may deduct the filing fee of **\$50.00** from one month of rent.

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: July 13, 2009.

Dispute Resolution Officer