



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EL GRECO APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for cause and I dismiss the Tenant's request for an Order for repairs, with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 30, 2014, by the Tenant to cancel a Notice to end tenancy issued for cause and to recover the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's evidence; however, the Tenant stated that she did not receive the Landlord's evidence. The Landlord testified that she served the Tenant her evidence by registered mail on January 31, 2014, as per the tracking information and Canada Post receipt she provided in her evidence. She confirmed that her registered mail was returned unclaimed.

The Tenant stated that she did not receive a notice to pick up the registered mail. Upon review of the contents of the Landlord's evidence the Tenant confirmed that she had

received a copy of the original 1 Month Notice, she was issued receipts for each rent payment, and she had previously received a copy of her tenancy agreement.

Section 90 of the Act provides that service by registered mail is deemed received five days after it is mailed. Accordingly, I find the Tenant is deemed served with the Landlord's evidence as of February 5, 2014, five days after it was mailed. That being said I do not find that the Tenant would be prejudiced if I accepted the Landlord's evidence as she has confirmed that she was provided with the original Notice, rent receipts, and the tenancy agreement in the past.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued for cause on January 27, 2014 be upheld or cancelled?
2. If upheld, did the Landlord attend the hearing and make an oral request for an Order of Possession?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on July 1, 2000 and switched to a month to month tenancy after June 30, 2001. Rent is payable on or before the 1st of each month and rent was initially \$760.00 plus \$20.00 for parking. The rent has subsequently been increased to \$820.00 plus \$20.00 for parking each month. On June 28, 2000 the Tenant paid \$380.00 as the security deposit.

The Landlord testified that she personally served the Tenant's boyfriend, at the rental unit, with the 1 Month Notice for repeated late payment of rent on January 27, 2014. The Tenant confirmed receiving the Notice and filing her application to dispute it three days later on January 30, 2014.

The Landlord argued that over the past several years the Tenant has been paying her rent late. She has spoken to the Tenant on several occasions and sometime during the fall of 2013 she told the Tenant that she could not longer allow the late payments and the Tenant would be evicted if she did not pay her rent on time. So when rent was not paid on time for October 2013 the Landlord served the Tenant a 10 Day Notice for unpaid rent on October 6, 2013.

The Landlord pointed to the Tenant's written statement submitted in her evidence and argued that she did not see the Tenant in October because she sent her boyfriend to pay the rent on October 9, 2013. Therefore, the Landlord did not have a discussion or

make an agreement with the Tenant in October that would allow the Tenant to pay her rent late.

The Landlord testified that the Tenant paid her rent late in four of the past five months. Specifically rent was paid late on the following days: March 2, 2014; January 7, 2014, December 2, 2013, November 3, 2013 and October 9, 2013. The Landlord stated that the Tenant simply ignores her so she wishes to proceed with the 1 Month Notice for late payment of rent and requests an Order of Possession be issued to her.

The Tenant testified and confirmed that she had paid rent late in years past but she was always allowed to pay it late if it was paid by the 15th of each month. She clarified her written submission saying that she wrote the Landlord a letter stating she would begin to pay her rent on time starting in October 2013.

The Tenant confirmed that the Landlord called her in October 2013 and told her should be would getting an eviction notice if rent was paid on time. She said that she thought there was a grace period of three or four days when rent would be considered paid on time. She also stated that she has problems because her pay cheque does not always fall on the first of each month when her rent is due so she pays it when she gets paid.

In closing, the Landlord denied ever agreeing to let the Tenant pay her rent late. Rather, she has had numerous discussions with the Tenant telling her she must collect the rent when it is due on the first of each month but the Tenant continues to ignore her. She wishes to proceed with the eviction and requested that the Order be issued effective March 31, 2014.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- *Tenant is repeatedly late paying rent*

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Section 26 of the *Residential Tenancy Act* stipulates that rent must be paid on time in accordance with the tenancy agreement, despite any disputes the tenant may have with their landlord.

Residential Tenancy Branch Policy Guideline #38 stipulates that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Notwithstanding the Tenant's argument that she had been paying her rent late over a long period of time, I find the Landlord was not estopped from evicting this Tenant for repeated late payment of rent. I make this finding in part because the undisputed evidence supports that in the fall of 2013 the Tenant was informed that the Landlord would no longer tolerate the late payments and she would be evicted if she paid her rent late. Despite the Tenant acknowledging that by promising to pay her rent on time beginning in October 2013, she continued to pay her rent late for four months out of the next five months. The Landlord supported this by issuing the Tenant a 10 Day Notice in October 2013 and then followed it up with a 1 Month Notice that was served in January 2014. Accordingly, I find the Landlord provided sufficient evidence to uphold the 1 Month Notice. Therefore I, dismiss the Tenant's application, without leave to reapply.

The Tenant has not been successful with their application; therefore I decline to award recovery of the filing fee.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective March 31, 2014, as requested.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord has been issued an Order of Possession effective March 31, 2014. This Order is legally binding and must be served upon the Tenant.

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: March 19, 2014

Residential Tenancy Branch

