



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OPT, O, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order of Possession; for “other”; and to recover the fee for filling this Application.

The Tenant stated that she understood she was applying to cancel a Notice to End Tenancy when she applied for an Order of Possession. She stated that she intended to apply to set aside the Notice to End Tenancy that is dated June 25, 2014. The Landlord stated that he also believed that Notice to End Tenancy was a subject in dispute at these proceedings. On the basis of the Tenant’s testimony that she understood she had applied to cancel this Notice to End Tenancy and on the Landlord’s testimony that he believed the Tenant was seeking to cancel this Notice, I find it reasonable to consider that issue in this hearing.

The Tenant stated that on July 16, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On August 29, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were mailed to the Tenant on August 28, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 03, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were mailed to the Landlord on September 03, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding in May of 2014 (File #), in which the Tenant disputed a One Month Notice to End Tenancy. The parties agree that the specified reason for ending the tenancy on this Notice to End Tenancy was that the Tenant was repeatedly late paying rent.

The Landlord and the Tenant agree that on May 26, 2014 an Arbitrator granted the Tenant's application to set aside a One Month Notice to End Tenancy for Cause. The Tenant contends that since the Landlord was previously unsuccessful in ending the tenancy due to repeated late payments of rent, the Landlord cannot attempt to end the tenancy for any late payments that were made prior to May of 2014.

The Landlord argued that the Arbitrator dismissed this One Month Notice to End Tenancy because a copy of the Notice to End Tenancy was not submitted in evidence for those proceedings and the Arbitrator was therefore unable to determine whether the Notice was valid. He argued that the Arbitrator did not consider whether his grounds to end the tenancy were valid.

A copy of this decision, which was rendered by Ms., was submitted in evidence. Her decision clearly indicates that she set aside this Notice to End Tenancy because the Notice was not submitted in evidence and she was unable to determine whether the Notice was effective because she was unable to determine if it complied with section 52 of the *Residential Tenancy Act (Act)*.

I find that Ms. set aside that particular Notice to End Tenancy because the Landlord had failed to establish that he had served a valid Notice that complies with section 52 of the *Act*. Her decision prevented the Landlord from attempting to enforce that particular Notice.

On the basis of her written decision, I find that Ms. did not consider whether or not the Landlord had grounds to end the tenancy because the Tenant was repeatedly late paying rent. I therefore find that the Landlord had the right to serve another Notice to End Tenancy in an attempt to end this tenancy for repeated late payments of rent, and that I have the authority to determine whether the tenancy should end for that reason.

Preliminary Matter #2

In the evidence package that was mailed to the Landlord on September 03, 2014, the Tenant refers to the Landlord entering the rental unit without consent in 2013. I decline to consider this incident, or any other alleged breaches of the Tenant's right to quiet

enjoyment, that were not specifically outlined in the details of dispute section of the Application for Dispute Resolution.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant's Application for Dispute Resolution clearly informs the Landlord that the Tenant is seeking compensation for a "constant threat of eviction", and I will be considering this claim.

There is no mention of any other form of "harassment" on the Application for Dispute Resolution. Although the Tenant raises other issues in the evidence package mailed on September 03, 2014, this package was not provided to the Landlord until approximately six weeks after the Application was filed and less than one week prior to the start of the hearing. In my view, the Tenant did not provide the Landlord with proper notice of this aspect of the claim and it will, therefore, not be considered in this Application for Dispute Resolution. I find that it would be prejudicial to the Landlord to proceed with this aspect of the claim, as the late notice makes it difficult for the Landlord to prepare a response to the claim.

Issue(s) to be Decided

Should the Notice to End Tenancy, dated June 25, 2014, be set aside; is the Tenant entitled to an Order of Possession; and is the Tenant entitled to compensation for loss of the quiet enjoyment of the rental unit?

Background and Evidence

The Landlord and the Tenant agreed that:

- this tenancy began on July 01, 2012
- when the tenancy began the rent was \$1,600.00 per month plus \$100.00 for utilities
- that rent was due by the first day of each month
- that rent was typically mailed to the Landlord
- that at some point in the tenancy they mutually agreed to reduce the rent to \$1,500.00 per month plus \$100.00 for utilities.

The Landlord stated that in November of 2013 the rent was increased to \$1,660.80. He stated that the Tenant was served with a Notice of Rent Increase in which she was informed the rent would increase to this amount and that she was also informed of the increase by email. The Landlord submitted copies of emails the parties exchanged in August of 2013 in which they discussed the proposed increase to \$1,660.80.

The Tenant stated that she understood the rent was increased to \$1,660.00. She stated that she would have paid \$1,660.80 if the Landlord had corrected her misunderstanding. The Landlord initially stated that he did not remind the Tenant that the rent was actually \$1,660.80 after she began paying \$1,660.00; he subsequently stated he probably did

remind her of the proper rent; and he referred to an email submitted in evidence, dated August 26, 2014, in which the Landlord again referred to the rent being \$1,660.80.

The Tenant stated that at a previous dispute resolution proceeding it was determined that the rent should be \$1,660.00. The Landlord stated that this was not determined at a previous dispute resolution proceeding. I note that in the decision reached by Ms. Weitzel she noted that the rent was \$1,660.00 in the background and evidence portion of her decision; however that does not appear to be a decision that she rendered.

The Landlord stated that on June 28, 2014 he mailed a One Month Notice to End Tenancy for Cause, dated June 24, 2014, to the Tenant. This Notice declared that the Landlord wished to end the tenancy on August 31, 2014 because the rent has been repeatedly late. The Tenant acknowledged receipt of this Notice.

In support of the Notice to End Tenancy, the Landlord stated that rent for April of 2014 was not paid on time. He stated that this rent cheque, in the amount of \$1,660.00, was mailed on April 14, 2014 and was deposited by the Landlord on April 21, 2014. The Landlord submitted an envelope, post marked April 14, 2014. The Tenant stated that she cannot recall when she mailed the rent cheque for April but she does not dispute that she likely mailed it on April 14, 2014.

In support of the Notice to End Tenancy, the Landlord stated that rent for March of 2014 was not paid on time. He stated that this rent cheque, in the amount of \$1,600.00, was mailed on March 26, 2014 and was deposited by the Landlord on March 31, 2014. The Landlord submitted an envelope, post marked March 26, 2014. The Tenant agreed that she likely mailed her rent for March on March 26, 2014.

The Landlord and the Tenant agreed that in February of 2014 the Tenant offered to repair a fence in lieu of rent for March of 2014 and that the Landlord indicated that they were considering the offer. The parties agree that an agreement regarding the repair had not been reached by March 01, 2014; that during the early part of March they discussed the terms of the repair; and that on March 14, 2014 the Landlord sent the Tenant an email, in which the Tenant was informed that they did not want the Tenant to repair the fence and that rent was now due.

In support of the Notice to End Tenancy, the Landlord stated that rent for November of 2014 was not paid on time. He stated that a rent cheque for November, in the amount of \$1,620.80, was deposited on November 18, 2014 and was received approximately one week before that. He stated that the rent was reduced by \$40.80 without permission from the Landlord and that he would have agreed to reimburse the Tenant for supplies used to repair the toilet if a receipt had been provided.

The Tenant agreed that money was deducted from the November rent payment in compensation for plumbing supplies the Tenant purchased. She acknowledged that the Tenant did not have permission to deduct this amount from the rent cheque, although

they had previously been compensated for repairs. She acknowledged that a receipt for these materials was never provided to the Landlord.

The Landlord submitted the following list which he stated shows when rent cheques were deposited:

- January rent - January 07, 2013
- February rent - February 04, 2013
- March rent - March 05, 2013
- April rent - April 03, 2013
- May and June rent – June 13, 2013
- July rent – July 26, 2013
- August rent – August 15, 2013
- September rent – September 09, 2013
- October rent - October 24, 2013
- November rent - November 18, 2013
- December rent – December 18, 2013
- January rent – January 20, 2014
- February rent - February 19, 2014
- March rent - March 26, 2014
- April rent - April 21, 2014

The Landlord stated that rent was typically deposited within one week after it being received, although he has no record of when it was received prior to March of 2014. He contends that the records for January, February, March, and April of 2013 are indicative of the months when rent was paid on time and deposited within one week, and the remaining months show that the rent was not paid on time, as it was not deposited within one week.

The Landlord submitted chequing account statements that are consistent with the aforementioned deposits. I specifically note that there is nothing on the bank statement from May of 2013 that would indicate rent was paid during that month.

The Tenant stated that she typically mailed her rent cheques one week before they were due. She stated that she did not anticipate that rent payments prior to April of 2014 would be discussed at this hearing so she cannot recall when she mailed any of those payments.

The Landlord and the Tenant agree that rent has been paid on time since May of 2014. The parties agree that on May 03, 2014 the Landlord sent the Tenant an email, requesting rent for May and then subsequently realized that cheque had been mailed to the Landlord on April 07, 2014.

The Tenant is seeking compensation for loss of quiet enjoyment as a result of being served the aforementioned Notice to End Tenancy and two other Notices to End Tenancy.

The Landlord and the Tenant agree that sometime in April of 2014 the Landlord served the Tenant with a One Month Notice to End Tenancy, which had a declared effective date of May 09, 2014. The parties agree that in this Notice the Landlord declared that the Landlord wished to end the tenancy because the rent has been repeatedly late.

The Landlord and the Tenant agree that this Notice to End Tenancy was the subject of a dispute resolution hearing on May 26, 2014 and that the Notice was subsequently sent aside. The Tenant contends that the Landlord breached her right to the quiet enjoyment of the rental unit when she mailed the Tenant a second Notice to End Tenancy for the same reason.

The Landlord and the Tenant agree that sometime in May of 2013 the Landlord served the Tenant with a Two Month Notice to End Tenancy, which had a declared effective date of June 30, 2013. The parties agree that in this Notice the Landlord declared that the Landlord wished to end the tenancy because the rental unit would be occupied by the Landlord, the Landlord's spouse, or a close family member of the Landlord or the Landlord's spouse.

The Landlord and the Tenant agree that this Notice to End Tenancy was the subject of a dispute resolution hearing on July 11, 2013 and that the Notice was subsequently sent aside.

The Tenant's claim for compensation is based on being repeatedly served with Notices to End Tenancy.

The Tenant is seeking compensation, in the amount of \$25.00, for the cost of mailing documents to the Landlord.

Analysis

On the basis of the testimony of both parties, I find that the current monthly rent is at least \$1,660.00. I note that there has been no dispute regarding the legality of this rent increase and it is, therefore, not an issue I have considered in this decision.

While I accept that the Landlord intended to increase the rent to \$1,660.80, I find that the Tenant either misunderstood or forgot the precise amount of the rent increase. On the basis of the decision rendered by Ms. (File #), I find it likely that both parties advised her during that hearing that the rent was \$1,600.00, given that she recorded it in her decision. That information would have contributed to the Tenant's understanding that rent was \$1,600.00.

As the Notice of Rent Increase was served in evidence, I find that I am unable to conclusively conclude that the rent was increased to \$1,680.80.

While I accept that the Landlord mentioned rent of \$1,680.80 in at least two occasions in emails, I find it possible that the Tenant still did not understand, as the emails were not specifically about the "missing" 80 cents. In the absence of proof that the Landlord

clearly informed the Tenant that she was mistakenly paying \$1,660.00, I find that I would not consider ending the tenancy on the basis of the fact the Tenant only paid \$1,660.00. I find that this is a minor administrative error that the Landlord did not diligently attempt to correct and is not grounds to end the tenancy in accordance with section 47 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant was served with a One Month Notice to End Tenancy for Cause, dated June 24, 2014, which declared that the Tenant must vacate the rental unit by August 31, 2014, pursuant to section 47(1)(b) of the *Act*. Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent.

On the basis of the undisputed evidence and the envelope, post marked April 14, 2014, I find that the Tenant did not pay rent when it was due on April 01, 2014.

On the basis of the undisputed evidence and the envelope, post marked March 26, 2014, I find that the Tenant did not pay rent when it was due on March 01, 2014. Given that during the month of February the Landlord and the Tenant were negotiating a fence repair in lieu of rent for March, I find that there was an implied understanding that rent would not be due on March 01, 2014.

I find, however, that rent for March became due on March 14, 2014, when the Landlord informed the Tenant, via email, that they did not want the Tenant to repair the fence and that rent was now due. As the rent was not mailed until March 26, 2014, I find that rent was not paid on time, nor was it paid in full.

Section 33 of the *Act* authorizes a tenant to reduce the rent for the cost of emergency repairs in certain circumstances, one of which is that a receipt for the repairs must be provided. On the basis of the undisputed evidence, I find that the Tenant never provided the Landlord with a receipt for the plumbing supplies that were deducted from rent for November of 2013. I therefore find that even if those plumbing supplies were used for an emergency repair, the Tenant did not have the right to deduct the cost of the supplies from rent for November. As full rent was never paid for November of 2013, I find that rent was not paid on time for November of 2013.

On the basis of the testimony of the Landlord and the bank statement from May of 2013, I find that rent for May was not paid until July of 2013.

Residential Tenancy Branch Policy Guidelines suggest that three late rent payments are the minimum need needed to end a tenancy in accordance with section 47(1)(b) of the *Act*. I concur with this guideline. As I am satisfied that that Tenant paid rent late on at least four occasions, I find that the Landlord has grounds to end this tenancy in accordance with section 47(1)(b) of the *Act*.

In determining that this tenancy should end I have placed some weight on the Landlord's testimony that the rent cheques were deposited within one week of receiving

them, as that testimony is corroborated by the envelopes in which the cheques were mailed in March and April and the bank statements for those months. On the basis of the bank statements submitted in evidence, I find that the Landlord's testimony that the rent was late on numerous occasions is credible. I therefore find it likely that the rent was late on more than four occasions.

In determining this matter, I have placed little weight on the Tenant's testimony that she typically mailed her rent cheques one week before they were due, as this evidence was not supported by any documentary evidence and is not consistent with rent payments made in April of 2014, March of 2014, and May of 2013.

In determining this matter, I find the Landlord's record keeping is somewhat unreliable. My concerns about the Landlord's record keeping were influenced, in part, by the email, dated July 31, 2013, in which the Landlord informed the Tenant that rent for July was "now overdue". This is inconsistent with the Landlord's deposit list and bank records, that show rent for that month was deposited on July 26, 2013.

My concerns about the Landlord's record keeping were influenced, in part, by the undisputed fact that the Landlord believed rent had not been paid for May of 2014 and subsequently realized that a post-dated cheque for that month had been provided in April of 2014.

As I have determined that the Landlord has grounds to end this tenancy in accordance with section 47(1)(b) of the *Act*, I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy, dated June 24, 2014, and I dismiss the Tenant's application for an Order of Possession. This Notice to End Tenancy remains in full force and effect. The Notice to End Tenancy served to end this tenancy on August 31, 2014 and the Tenant remains obligated to vacate the unit on the basis of that notice.

The Landlord did not request an Order of Possession during the hearing and one was, therefore, not granted. The Landlord has the right to file an Application for Dispute Resolution seeking an Order of Possession if the Tenant does not vacate the rental unit on a date specified by the Landlord.

Every tenancy agreement contains an implied covenant of quiet enjoyment. Frequent and ongoing interference by the landlord is generally considered a breach of a tenant's right to quiet enjoyment, for which they would be entitled to compensation. In my view, repeatedly attempting to end a tenancy for a variety of invalid reasons would constitute a breach of a tenant's right to quiet enjoyment.

As I have determined that the Landlord had grounds to end the tenancy on the basis of repeated late payment of rent, I find that the Landlord acted appropriately when the Landlord served the One Month Notice to End Tenancy, dated June 24, 2014. As the Landlord acted appropriately by serving this Notice to End Tenancy, I can find no reason the Tenant should be compensated for being served with this Notice.

As was determined as a preliminary matter, the Landlord had the right to serve the second One Month Notice to End Tenancy. The One Month Notice to End Tenancy that was previously served was set aside because the Landlord failed to establish that a valid Notice, which complied with section 52 of the *Act*, had been served. The merits of that Notice had not been determined and, in my view, the Landlord had every right to attempt to end the tenancy on the basis of repeated late payment of rent, and no compensation is warranted.

Although the Landlord's attempt to end the tenancy pursuant to section 49 of the *Act* in 2013, I do not find that this was a breach of the Tenant's right to quiet enjoyment. While the Landlord may have misunderstood his right to end the tenancy in accordance with section 49 of the *Act*, I am not satisfied that this Notice to End Tenancy was served for the purposes of disturbing the Tenant. Upon being advised that the Landlord did not have the right to end the tenancy pursuant to section 49 of the *Act*, I note there was no further attempt to end the tenancy for an invalid reason.

As the Landlord has not repeatedly attempted to end this tenancy for an invalid reason, I find that the Tenant is not entitled to compensation as a result of the Notices to End Tenancy that were served.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for the cost of mailing documents for these proceedings.

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss the Tenant's application to recover the fee for filing this Application.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety. 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: September 14, 2014

Residential Tenancy Branch