



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, MNDC, LRE, FF

For the landlords – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent for cause; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing. The parties gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenant's claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the One Month Notice to End Tenancy?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2013. A new tenancy agreement was entered into between the tenant and the male landlord CL on September 01, 2014. This agreement was for a fixed term tenancy which is due to expire on September 30, 2016. Rent for this unit is currently \$1,800.00 per month and the tenant is permitted to deduct \$170 a month for the landlord's share of the utilities. Rent is due on the 1st of each month in advance. The tenant paid a security deposit of \$800.00 at the start of the original tenancy.

BU testified that the tenant has been repeatedly late paying rent. This has occurred on at least five occasions. BU referred to rent cheques from the tenant dated for three months in 2015. The rent cheque for January is dated January 06, 2015; the rent cheque for February is dated February 07, 2015 and there are two rent cheques for March with partial payments, one is dated March 01, 2015 for \$900.00 and the second dated March 06, 2015 for \$632.25.

BU testified that due to the late payments of rent CL and BU both served the tenant with a One Month Notice to End Tenancy for cause dated July 22, 2015. These Notices were served upon the tenant in person. Two Notices were provided, one signed by CL and one by BU. BU explained that she and her ex-husband were divorced and settling their assets but as she was still a part owner of the property she wanted it to be made clear to the tenant that she still had an interest in the property despite not being named on the tenancy agreement as a landlord.

BU testified that they had a normal practise each month of picking up the rent cheque. BU would contact TB prior to the 1st of each month asking when BU could come and collect the rent. In January TB advised BU that she was experiencing some financial difficulty and her rent would not be ready on January 01, 2015. TB would then write the landlord a cheque on the day it was available and the landlord would collect it. In January, 2015 the tenant wrote the cheque

to CL and in February and March the cheques were made out to BU. Sometimes the tenant would write a postdated cheque for the day she knew funds would be available. BU testified that she needed the rent on the 1st of each month as she had to pay the mortgage and feed her family. BU testified that she never agreed verbally with the tenant that rent could be paid late. BU seeks to have the One Month Notice upheld and requested an Order of Possession effective as soon as possible.

TB testified that she had an agreement with CL who was her landlord, to pay rent on a later day as she had some financial difficulties. CL had told the tenant that CL was now the sole owner of the house and TB had an agreement with CL to put rent cheques under his door as he lived in the basement suite and worked away from home. In February and March CL instructed the tenant to make the cheques out to BU and pay her the rent money. BU did not call the tenant prior to February 01 to collect the rent on February 01 and CL had verbally told the tenant she could pay rent later. It was CL who told TB the day that BU was coming to get the rent for February. CL also informed BU that the rent for March would be paid late but then BU called TB and said she needed the money so the best TB could do was pay \$900.00 on March 01 and the remainder of the rent due on March 06.

TB testified that if BU thought TB was paying rent late without permission BU could have served TB with a 10 Day Notice to End Tenancy or something to say rent had to be paid on the 1st of each month. The agreement was with CL not BU as CL was TB's landlord as shown on the tenancy agreement. The other rent cheques up to July were also paid late to CL as agreed and rent for August and September have been paid by email transfer. TB testified that the landlords listed the house in June, 2015 and they have had many months to serve the tenant with a 10 Day Notice to End Tenancy if there was not an agreement to pay rent on a later date. The One Month Notice was only served to the tenant after there were issues about the landlords showing the house to potential purchasers. The tenant seeks to have the One Month Notice cancelled.

I asked BU why CL has not appeared at the hearing today. BU testified that he is working. BU attempted to call CL and ask him to attend the hearing but he was unable to do so.

TB testified that CL is not working as he was at the house yesterday.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application for an Order of Possession based on the reason given on the One Month Notice; I have considered both arguments in this matter. BU has shown that the tenant has paid rent late on at least three occasions. TB agreed that the rent was paid late but that this was with the agreement of the other landlord CL.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. If TB and the other landlord CL did have a verbal agreement that TB could pay rent on a day other than the day specified in the tenancy agreement and the landlord's agent BU was not party to or aware of this agreement then the burden of proof falls to the landlord to show that no agreement was in place.

As BU was not party to this agreement if in fact it was in place and CL did not attend the hearing to provide sworn testimony and submit to cross examination that there was not an agreement then I must find that each parties testimony is equally probable and when it is one person's word against that of the other then the burden of proof is not met.

As a result, I find I am unable to determine if there was a verbal agreement between TB and CL concerning when rent can be paid and therefore BU and CL are unable to show that rent is late if TB was paying it on a date agreed to by CL. Consequently, the One Month Notice is cancelled and the tenancy will continue.

As the tenant's application heard today has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*. The landlords must bear the cost of filing their own application.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated July 22, 2015 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

The tenant is at liberty to reapply for the remainder of her application not heard at the hearing today.

The landlord's application is dismissed in its entirety without leave to reapply.

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 15, 2015

Residential Tenancy Branch

