



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, FF

For the landlord: OPC, OPR, MNDC, MNR, FF

Introduction, Preliminary, and Procedural Issues

This hearing was convened to deal with the tenant's application seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice") and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent were present for the hearing. The landlord was represented by their daughter, as the landlord was out of the country. Although there was no written authority or confirmation from the landlord that the landlord would be represented by an agent, the landlord's agent submitted that she had full understanding of the issues in the applications, had full authority and could represent the interests of the landlord. I therefore allowed the landlord's agent to act and represent the landlord and the hearing proceeded.

During the early stages of the hearing, the landlord's agent (hereafter "landlord") referred to their own application, providing the file number and stating that a hearing on their application was set for December 2, 2015. The landlord applied for an order of possession for the rental unit pursuant to a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant submitted a copy of the 10 Day Notice and another 1 Month Notice, and it was clear from his evidence his intention was to dispute the 10 Day Notice and the additional 1 Month Notice, in addition to disputing the original 1 Month Notice.

The parties agreed that their respective applications dealt with the same Notices issued by the landlord and landlord agreed that their application seeking enforcement of the Notices could be heard and considered in conjunction with the tenant's application seeking cancellation of the Notices.

The landlord's file was not before me; however, directly after the hearing, I requested the landlord's file and had possession of the file prior to making this Decision. The

landlord was advised that their hearing previously set on December 2, 2015 would therefore not go forward as their application would be resolved with my Decision. It is noted that in the landlord's application, there was a signed statement from the landlord authorizing their daughter, the landlord's agent here, to act on their behalf.

Therefore, pursuant to sections 62(1)(b) and 64(3)(a), of the Act and section 2.3 of the Dispute Resolution Rules of Procedure ("Rules"), I have crossed the landlord's application with the tenant's application so that they may be heard together, as the issues were sufficiently related to the other's application and in the interest of administrative fair play and expediency of the issues.

I also find it appropriate to amend the tenant's application, to allow him to dispute all the Notices issued by the landlord up through the date of the hearing.

Thereafter, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The participants were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the other's application or of the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notices and to recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and/or alleged cause, to monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord has failed to prepare a written tenancy agreement for this tenancy; however, the undisputed testimony showed that this tenancy began about a year ago and the tenant's monthly rent is \$980.00.

Pursuant to 11.1 of the Rules, the landlord proceeded first in the hearing to explain or support the Notices to End Tenancy.

Landlord's application-

The evidence showed that that the landlord served the tenant with a 1 Month Notice on or about July 29, 2015, seeking to end the tenancy as the rental unit was part of an employment arrangement that has ended or is needed for a new employee.

The landlord agreed that the cause listed on this Notice was incorrect and invalid and should be cancelled.

On July 3, 2015, the evidence showed that the landlord issued the tenant a 10 Day Notice listing unpaid rent of \$280.00 due as of July 3, 2015. On August 4, 2015, the landlord issued the tenant a 10 Day Notice, listing unpaid rent of \$980.00 as of July 30, 2015.

The Notices informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord agreed that since the issuance of the 10 Day Notices, the tenant has paid the rent by e-transfer, within the 5 days, but not on time according to the tenancy agreement.

On August 7, 2015, the landlord submitted that the tenant was served another 1 Month Notice, with an effective move-out date of September 29, 2015, and as cause, the landlord listed that the tenant is repeatedly late in paying rent.

The Notice explained that the tenant had ten (10) days to file an application for dispute resolution at the RTB in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

In support of the August 7, 2015, 1 Month Notice, the landlord's agent submitted that the tenant has been habitually late in paying rent, since the beginning of the tenancy, and was warned last year, verbally by the landlord, to make payments on the 1st of the month as due according to the tenancy agreement.

In response to my question, the landlord submitted that there was proof of the payments in the landlord's application; however, there were no accounting records.

The landlord's monetary claim is \$2940.00, comprised of monthly rent for October through December 2015.

Tenant's application and response-

In response, the tenant submitted that he paid the unpaid rent listed within the 5 days of receiving the 10 Day Notices and additionally, there was an agreement with the landlord that if his payday was not by the 1st of the month, he could pay rent within the first 4 days of the beginning of the month and has done so.

The tenant submitted that there were never any problems with making rent payments within the first 4 days of the month, until he was informed by the landlord's agent that they wanted vacant possession of the rental unit in order move family into unit, the landlord's ploy to avoid paying the tenant compensation equivalent to 1 month's rent.

The tenant submitted that in order to have him evicted, the landlord has refused the e-transfers of rent payments, and that the evidence of the landlord is only a screenshot, not proof of when payment was made.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I make the following findings:

Two 10 Day Notices-

As there was no dispute of the tenant's evidence that he paid the rent deficiencies listed on the July 3 and August 4, 2015, Notices within 5 days of receiving the Notices, I find the tenant complied with section 46(4) of the Act. I therefore grant the tenant's application and hereby order that the July 3, 2015 and the August 4, 2015 Notices are cancelled, and they are of no force or effect.

1 Month Notice (July 29, 2015)-

The landlord agreed that the cause listed was invalid and that the Notice should be cancelled. I therefore order that the July 29, 2015, Notice is cancelled and it is of no force or effect.

1 Month Notice (August 7, 2015)-

Section 47(1)(b) of the Act authorizes landlords seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions. The landlord relies on this guideline to justify their Notice.

In the case before me, after considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed.

In reaching this conclusion I was persuaded by the landlord's lack of any notice, written or oral, to the tenant that his payments were repeatedly late and that he failed to issue written warnings to the tenant about the alleged infraction, with notice that a continuation of such late payments could lead to the end of the tenancy.

Without the landlord himself being present to provide convincing evidence to the contrary and without a written tenancy agreement, I found that the landlord's agent was not able to prove that monthly rent payments are due on the 1st day of the month, rather than by the 4th day of the month, as was the tenant's contention of his agreement with the landlord.

I find it just as likely as not that the landlord agreed with the tenant that he, the tenant, could make his rent payments by the 4th day of the month, according to his pay cheque being issued.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove that the tenant is late in paying his rent, irrespective of Policy Guideline 38.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated August 7, 2015, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Additionally, in the absence of the landlord, I am not prepared to order or advise the tenant to make his monthly rent payments by the 1st day of the month going forward, as the tenant stated, without dispute from the appropriate party, i.e., the landlord, that making payments within the first 4 days of the month was acceptable to the landlord.

Tenant's application-

As I have cancelled all of the outstanding Notices to end the tenancy issued by the landlord and previously referenced within this Decision, I grant the tenant's application seeking cancellation of the Notices.

As the tenant has been successful with his application, I grant him recovery of his filing fee of \$50.00. In satisfaction of this monetary award, I direct the tenant to deduct \$50.00 from his next or a future monthly rent payment. I also order the landlord to consider that the tenant has paid rent in full with this deduction of \$50.00.

Landlord's application-

As I have cancelled the outstanding Notices issued by the landlord, I dismiss the landlord's application seeking an order of possession for the rental unit based upon that Notices.

As to the landlord's monetary claim, I find the landlord submitted insufficient evidence to show that the tenant failed to pay monthly rent for October, and I therefore dismiss this portion of their monetary claim.

As to the landlord's monetary claim for rent for November and December, I find this portion of their application is premature, and it is dismissed, with leave to reapply.

Conclusion

The tenant's application seeking cancellation of the Notices is granted as I have cancelled the Notices and granted him recovery of her filing fee, pursuant to section 72(1) of the Act.

The landlord's application seeking an order of possession for the rental unit is dismissed, without leave to reapply.

The landlord's monetary claim for monthly rent for October 2015, is dismissed, with leave to reapply.

The landlord's monetary claim for monthly rent for November and December 2015, is dismissed, with 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: October 19, 2015

Residential Tenancy Branch

