



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Now Canada Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord's agent also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this decision. No issues with respect to service or delivery of documents or evidence were raised, and the parties agree that all evidentiary material has been exchanged.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, and more specifically for repeated late rent?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2011 and expired on October 1, 2011. The parties had been to Arbitration in 2012 which ordered that the tenancy is on a month-to-month basis, and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$140.00 per month payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within a complex containing 39 units, and the landlord's agent does not reside in the complex. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that she served the tenant with a 1 Month Notice to End Tenancy for Cause on August 10, 2016 by posting it to the door of the rental unit. A copy has been provided and it is dated August 10, 2016 and contains an effective date of vacancy of September 14, 2016. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The landlord's agent testified that the tenant was served with 5 notices to end the tenancy for unpaid rent or utilities since May, 2015. The last 3 late payments were on March 3, 2016; April 4, 2016 and August 3, 2016, and notices to end tenancy were issued for those occasions and for 2 occasions in 2015. Copies have been provided.

The landlord tried to assist the tenant with financial budgeting, but the tenant consistently uses medical issues as an excuse to not pay rent on time. The landlord organization supports women who need low income housing, but when rent isn't paid on time and inconsistently, the landlord is like any other landlord. Many times since the beginning of the tenancy, prior to March, 2016, the tenant provided the landlord post-dated cheques and then called to say the money wasn't in the account.

The landlord's first witness (CN) testified that she is the Program Coordinator for the landlord society and is also in charge when the Executive Director is unavailable, and supervises the landlord's agent. She further testified that in March, April and August, 2016 the tenant was served with notices to end the tenancy for unpaid rent.

The landlord's agent would advise the witness and the Executive Director about a tenant situation, and in this case the tenant was late 3 times and the landlord's agent and witness decided to issue a 1 Month Notice to End Tenancy for Cause.

The landlord's second witness (LT) testified that the 1 Month Notice to End Tenancy for Cause was issued because in 3 instances in 6 months the tenant was late with rent, and a cheque had been returned for insufficient funds just prior. As part of the building management team, the landlord's agent and the witnesses meet, and this tenant was raised in a meeting about late payments of rent. Each meeting has an agenda, part of which is about move-outs, rents being paid on time, and other tenant issues. They made a team decision to issue the notice.

The tenant testified that she had substantial medical reasons for being late with rent, and has provided notes from physicians. The tenant had 2 surgeries prior to 2016 and had surgery again in Vancouver on February 29, 2016, so had to go there on February 28. The landlord's agent asked for cash for rent but the tenant didn't have the cash before she left so she gave the landlord a cheque post-dated for March 1, 2016. The tenant believes she gave the landlord's agent the cheque either the 27th or 28th of

February, 2016. When the tenant returned home on March 3, 2016, she found the notice to end the tenancy and paid the rent that day.

The tenant has no memory of why rent was late for April or August. Blocks of time are missing. The tenant has medical complications and submits that these are extenuating circumstances.

In rebuttal, the landlord's agent denies that the tenant tried to give her a post-dated cheque prior to March 1, 2016.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause dated August 10, 2016 and I find that it is in the approved form and contains information required by the *Act*, other than the effective date of vacancy. Where rent is payable on the 1st day of each month, the effective date of vacancy cannot be sooner than the end of the month following the date of issuance. Incorrect effective dates are changed to the nearest date that complies with the *Act*, which I find is September 30, 2016.

The reason for issuing it is in dispute.

The tenant has no recollection of why or when rent was paid for April or August, 2016, and testified that her illness and notes from her physicians are extenuating circumstances that ought to be considered.

I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Rent, which states, in part:

“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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

“In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.”

To consider the tenant's medical issues to be exceptional circumstances would constitute a right of the tenant to be late with rent, which is not contemplated by the legislation. The tenancy agreement clearly states that rent is due on the 1st day of each month, and I am not satisfied that there has been a bank error or that the tenant should be permitted to continue to pay rent late due to an illness.

In the circumstances, I am satisfied that the landlord had cause to issue the 1 Month Notice to End Tenancy for Cause, and the tenant's application for an order cancelling it is dismissed.

The *Residential Tenancy Act* also provides that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord. Having found that the effective date of vacancy is changed to September 30, 2016, and since that date has passed, I grant the Order of Possession on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 12, 2016

Residential Tenancy Branch

