



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 22, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and to recover the cost of his filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. 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.

Each party affirmed they served the other with copies of the same documents and digital evidence that they had served the Residential Tenancy Branch (RTB). Each party acknowledged receipt of the evidence from each other and no issues regarding service or receipt were raised. As such, I have considered the relevant submissions from both parties which met the requirements of the Rules of Procedure.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which was relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord submitted sufficient evidence to uphold the 1 Month Notice issued December 22, 2016?
2. If so, is the Landlord entitled to an Order of Possession?

Background and Evidence

I heard the Landlord and Tenant confirm they entered into a written month to month tenancy agreement that commenced on July 1, 2016. Rent of \$725.00 was payable on the first of each month and on June 28, 2016 the Tenant paid \$350.00 as the security deposit. An additional term was written on page six of the tenancy agreement which stated "no smoking outside and inside".

On December 22, 2016 the Landlord served the Tenant a 1 Month Notice to end tenancy when it was posted to the Tenant's door. That Notice listed an effective date of February 1, 2017 and was issued pursuant to Section 47(1) of the Act listing the following reasons:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Put the landlord's property at significant risk

The Landlord testified the Tenant paid his rent late, in partial payments, as follows:

- October 2016 rent: \$700.00 paid on October 1, 2016 and \$25.00 paid on October 3, 2016.
- November 2016 rent: \$400.00 paid on October 29, 2016 and \$325.00 paid on November 11, 2016.
- December 2016 rent: \$400.00 paid on November 25, 2016; \$150.00 paid on Dec. 8, 2016; and \$175.00 paid on Dec. 10, 2016.

I heard the Landlord state the additional reasons for serving the Tenant the Notice related to: the Tenant and/or his guest smoking in the "door well", the area outside in front of the Tenant's door; smoking inside the rental unit; and the Tenant ringing the Landlord's doorbell seven or at times at 6:30 a.m. on morning after the Landlord and his children had been up late. The Landlord submitted that when he spoke to the Tenant after he rang the doorbell the Tenant started to swear at him.

I heard the Tenant confirm he had paid his rent on the dates submitted by the Landlord. He stated he had also paid his September 2016 rent late as it was not paid until September 3, 2016 when he returned to town. The Tenant submitted he had made a verbal agreement with the Landlord's father which allowed him to pay his rent late.

The Tenant asserted he had signed receipts which were proof he had a verbal agreement to pay his rent late. The Tenant described the rent receipts as being receipts that he filled out and had the Landlord and Landlord's father sign. He stated each receipt listed: the date; his name; the amount of rent that was paid; and the words "verbal agreement partial rent paid" were written on the October, November, and December receipts.

The Tenant initially stated he dealt primarily with the Landlord's father regarding his tenancy. As he continued his submissions he stated he entered into the tenancy agreement with the Landlord and that he had paid his rent to the Landlord's father on some occasions. He continued saying he had signed receipts, some of which were signed by the Landlord's father.

The Tenant confirmed he rang the Landlord's doorbell four or five times at 6:30 a.m. on the morning in question. He stated there were no lights turned on in the Landlord's house and no

one came to the door so he left. He submitted he rang the doorbell to ask why the sidewalks had not been shoveled and to ask why the Landlord's residence was so noisy the night before.

The Tenant testified that he, his guests, and the tenants in the other rental unit all smoked off of the property. He stated that he was going to have the other tenant be his witness to support his submissions that he did not smoke on the property and to talk about the noise he told him was caused by the Landlord's family. He stated he had asked the other tenant to provide evidence relating to information the Tenant told him. I informed the Tenant that type of hearsay evidence would have no evidentiary weight; therefore, I would not be hearing that testimony and would be considering the testimony from the Tenant and the Landlord, pursuant to the Rules of Procedure.

The Landlord disputed the Tenant's submissions stating his father did not sign any receipts. He acknowledged that anyone who was home and who answered the door would be able to accept the rent payments. He stated his father would not enter into any agreement for the payment of rent; rather, he father would simply receive the payment and give it to the Landlord.

I heard the Landlord state the Tenant came to his door on January 1, 2017 with all of the receipts filled out and asked him to sign them. The Landlord stated he checked over the receipts to make sure the information and dates were correct and when he signed the receipts none of them stated "verbal agreement partial rent paid". The Landlord returned the signed receipts to the Tenant and no copies were left with the Landlord.

The Landlord argued that since serving the Tenant with the 1 Month Notice he saw the Tenant's female friend blow smoke out and when she saw him she hid the cigarette. He asserted this was evidence that the Tenant was not going to comply with the tenancy agreement moving forward so he would like to end the tenancy now.

I then heard the Tenant confirmed that he prepared all the receipts for the Landlord to sign on January 1, 2017. He stated the Landlord took the receipts inside to review with his wife before returning them to him signed. The Tenant submitted the Landlord told him he did not need copies of the receipts. He argued the "verbal agreement partial rent paid" statement was written on the receipts before the Landlord signed them.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 1 Month Notice to End Tenancy issued December 22, 2016, 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 Tenants in a manner that complies with section 88 of the *Act*.

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

When determining the reason relating to repeated late payment of rent I considered Residential Tenancy Branch Policy Guideline 38 which states, in part, that three late payments are the minimum number sufficient to justify a notice under these provisions. Policy 38 further provides that 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.

The undisputed evidence was the tenancy agreement stipulated rent was payable on the first of each month. The Tenant paid rent late, after the first of each month, in September, October, November, and December 2016.

A written tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing, as provided for by section 14(2) of the *Act*.

I do not accept the Tenant's submissions that the rent receipts were written proof of an agreement authorizing him to pay his rent late. Rather, I find the receipts were evidence of the dates the rent was paid late.

I favored the Landlord's submissions that at the time he signed all of the rent receipts on January 1, 2017 the statement "verbal agreement partial rent paid" were not written on those receipts. I favored the Landlord's submissions over the Tenant's submissions, in part, because the Landlord's submissions were forthright and consistent which added credibility to his evidence. I note the Tenant initially stated the Landlord's father signed his receipts and then later changed his submission agreeing that the Landlord had signed all the receipts on January 1, 2016.

Based on the above, I find there was sufficient evidence to support the first reason listed on the 1 Month Notice issued December 22, 2016, which was the Tenant had repeatedly paid his rent late. Therefore, there was no requirement to analyze the remaining reasons listed for issuing the Notice, as there was sufficient evidence to uphold the Notice on the first reason. Accordingly, I dismiss the Tenant's application, without leave to reapply, and I declined to award recovery of his filing fee.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the above criteria have been met and I grant the Landlord's request for an Order of Possession, effective **February 1, 2017 at 1:00 p.m.**, pursuant to section 55(1) of the *Act*. In the event the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant was not successful with their application and the Landlord was granted an Order of Possession effective February 1, 2017.

This decision is final, legally binding, and 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: January 20, 2017

Residential Tenancy Branch