



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPC, FFL
 Tenant: CNC, DRI, OLC

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the One Month Notice pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord testified that they served the tenant with the Landlord's Application for Dispute Resolution (Landlord's Application) by way of registered mail on September 19, 2017. The tenant confirmed that they received the Landlord's Application. In accordance with section 89 of the Act, I find that the tenant was duly served with the Landlord's Application.

The landlord testified that they served the tenant with their evidentiary package by way of registered mail on September 30, 2017. The tenant confirmed that they received the landlord's evidentiary package. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's evidentiary package.

The tenant testified that they served the Tenant's Application for Dispute Resolution (Tenant's Application) to the landlord by leaving it in the mail slot of the landlord's office on September 20, 2017. The landlord testified that the mail slot is not functional and he only received the notice of hearing document which he found on the floor in front of the door. In accordance with section 71 of the Act, I find the landlord was duly served with the notice of this hearing.

The tenant testified that they served their evidence by leaving it in the mail slot at the landlord's office on November 16, 2017. The landlord disputed this as he maintained that the mail slot is not fully functional and that he did not receive any evidence from the tenant.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that, even if the tenant did serve the landlord with their evidence in accordance with the Act, they did not serve the landlord in accordance with Rule 3.14 and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason the tenant's evidence is not accepted for consideration.

The tenant acknowledged receiving the One Month Notice on September 12, 2017. In accordance with section 88 of the Act, I find the tenant was duly served with the One Month Notice on September 12, 2017.

Preliminary Matters

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find the tenant applied to dispute an additional rent increase and to have the landlord comply with the Act, which are issues not related to the primary issue for this hearing concerning the One Month Notice. For this reason, the portion of the Tenant's

Application to dispute an additional rent increase and to have the landlord comply with the *Act* is dismissed, with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided a copy of a tenancy agreement which shows this tenancy commenced on May 01, 2014, with a monthly rent of \$920.00, due on the first day of each month. The landlord provided two Notice of Rent Increase forms showing the current monthly rent was raised to \$1,060.00. The tenant contends that the rent was raised by an illegal amount in 2016 and that the rent should be \$990.00. The landlord testified that they currently retain a security deposit in the amount of \$460.00.

A copy of the landlord's September 12, 2017, One Month Notice was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlord cited the following reason for the issuance of the One Month Notice:

Tenant is repeatedly late paying rent.

The landlord also submitted into evidence:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day notice) dated October 02, 2014;
- A copy of a 10 Day Notice dated November 02, 2014;
- A copy of a 10 Day Notice dated December 12, 2014;
- A copy of a 10 Day Notice dated January 02, 2016;
- A copy of a 10 Day Notice dated November 02, 2016;
- A copy of a 10 Day Notice dated December 02, 2016;
- A copy of a 10 Day Notice dated March 02, 2017; and
- Copies of rent receipts, each for an amount of \$1,060.00, dated July 01, 2017, August 01, 2017 September 01, 2017, October 01, 2017 and October 31, 2017.

The landlord testified that the tenant was always late paying rent between 2014 and 2016. The landlord further testified that the tenant was late paying rent in June 2016 November 2016, December 2016 and March 2017.

The tenant submitted that they have had a problem getting rent receipts from the landlord when paying the monthly rent in cash which has resulted in some of the instances of late payment of rent in the past.

The landlord submitted that he has provided receipts for the last five months of rent paid by the tenant.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. This section provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on September 18, 2017, and since I have found that the One Month Notice was served to the tenant on September 12, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden of demonstrating, on a balance of probabilities, that the tenant is repeatedly late paying rent.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence that the tenant has been repeatedly late paying the rent. Residential Tenancy Policy Guideline #38 (PG#38) states that; "Three late payments are the minimum number sufficient to justify a notice under these provisions." PG #38 also states that "if the late payments are far apart, an arbitrator may determine that, in the circumstances, the tenant cannot be said to be 'repeatedly late'. A landlord who fails to act in a timely manner after the most recent late payment may be determined by an arbitrator to have waived reliance on this provision."

I find that there has only been one instance of late payment of rent in the last 6 months, which occurred in March 2017. I find that this one instance of late payment of rent in the last 6 months does not meet the test as laid out in PG#38 which states that a minimum number of three instances are required to issue a One Month Notice for repeatedly late

paying rent. I find that the late payments of rent for November 2016 and December 2016 and the late rent payments prior to those are too far in the past to be considered repeatedly late paying rent. I note that if the landlord had issued the One Month Notice after the late rent payment in March 2017, the resulting decision might have been different.

Based on the evidence and affirmed testimony, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*. Further late payments of rent could very well lead to a different result should the landlord issue a new One Month Notice for the late payment of rent.

As I have dismissed the tenant's application to dispute an additional rent increase with leave, I make no findings as to the legal amount of rent currently owed each month.

As the landlord has not been successful in their application, I dismiss the landlord's request for the filing fee, without leave to reapply.

I note that section 26 (2) of the *Act* requires a landlord to provide a tenant with a receipt for rent paid in cash.

Conclusion

The tenant is successful in their Application.

The One Month Notice dated September 12, 2017, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

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: December 07, 2017

Residential Tenancy Branch