



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FFT, LRE, OLC, RP, FFL, OPC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties 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. The parties acknowledged receipt of evidence submitted by the other.

The tenants were represented by their father who also resided in this unit up until January 2017 but has moved to a different location since then.

Issue(s) to be Decided

Are the tenants entitled to have the one month notice cancelled? If not, are the landlords entitled to an Order of Possession based on the 1 Month Notice?

Are the tenants entitled to an order compelling the landlord to make repairs to the unit?

Are the tenants entitled to an order compelling the landlord to conduct emergency repairs for health and safety reasons?

Are the tenants entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order suspending or setting conditions on the landlords right to enter the unit or suite?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony and documentation. The tenancy began on February 1, 2015. The present monthly rent is \$1450.00 due in advance and on the first of each month. The tenants provided a security deposit of \$725.00 at move in. The landlord testified and provided documentation that the tenants have been late in paying their rent 12 of the last 14 months. The landlord testified that the tenants have not paid the rent for March 2018. The landlord testified that the parties agreed to and signed a tenancy agreement that requires that the tenants pay the rent on or before the first of each month. The landlord testified that there is also significant damage in the unit as a result of the tenants' actions. The landlord testified that on December 22, 2017 the landlord issued a One Month Notice to End Tenancy for Cause with an effective date of January 31, 2018 was issued on the following grounds:

- *(b) the tenant is repeatedly late paying rent;*
- *(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
- *has caused or is likely to cause damage to the landlord's property,*
- *(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*
- *(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

GW gave the following testimony and submissions on behalf of the tenants. GW testified that his son has a child with significant health issues which is the primary reason for the late payments. GW testified that the rent is eventually all paid up and that despite it being due on the first of each month, the tenants is never more than a month behind. GW testified that the landlord has not maintained the property and that the unit needs numerous repairs and that the landlord refuses to fix them. GW testified that he advised his son not to pay the rent for March.

Analysis

Residential Tenancy Policy Guideline 38 addresses the issue before me as follows:

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

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.

In the matter before me the tenants have been late in paying the rent 12 of the past 14 months. GW acknowledged and conceded that rent is due on the first of each month and that his son was late with his payments as alleged but submits that due to having a family member with significant health issues, they have done the best they can.

Based on the landlords' documentation and the acknowledgment of the tenants' agent, I find that the landlord has provided sufficient evidence to end the tenancy for cause based on the repeated late rent payments. The notice to end tenancy is confirmed. The landlord is granted an order of possession in accordance with section 55 of the Act.

As I have found that the tenancy is to be terminated, I need not consider the other grounds applied for by the landlord.

Also, the tenants applied for several issues related to repairs and having the landlord comply with the act; as I have found that the tenancy is terminated, I need not consider those items as it is moot at this point, and I therefore dismiss the entirety of the tenants' application without leave to reapply. This was explained in great detail to GW who indicated that he understood.

As the landlord has been successful in this application, I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant. The landlords are entitled to retain \$100.00 from the security deposit in full satisfaction of the claim.

Conclusion

The One Month Notice for Cause dated December 22, 2017 with an effective date of January 31, 2018 is confirmed, it is of full effect and force. The landlord is granted an order of possession.

The tenant'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: March 15, 2018

Residential Tenancy Branch