



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting cancellation of the One Month Notice to End Tenancy for Cause, as well as an order requiring the Landlord to provide a key to the front door. The Tenant also requests an order for payment of the filing fee.

The Landlord and Tenant both appeared for the scheduled hearing. I find that the Notice of Hearing was properly served in accordance with section 89 of the Act, and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The Landlord asked that the matter be amended as his first and last name were reversed on the Notice of Hearing, and this amendment has been made.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy pursuant to section 47 of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Is the Tenant entitled to an Order requiring the Landlord to provide keys, pursuant to section 65 of the Act?

Is the Tenant entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began March of 2016 under a fixed term tenancy that reverted to month-to-month on March 1, 2017; the monthly rent is \$925.00 due on the first of each month, and a copy of the signed tenancy agreement was submitted into evidence.

The Tenant was given a letter from the Landlord dated May 21, 2018 which states that the Tenant has a pet without the authorization of the Landlord and that she must remove the dog within one week, and that she was being served a Notice to End Tenancy.

The Landlord served a One Month Notice to End Tenancy for Cause to the Tenant dated May 22, 2018 by regular mail on that same date; the effective date noted is July 1st and the reason given is that the Tenant is repeatedly late with rent payments. The Landlord states that he forgot to check the box to identify the issue of the dog being in the rental unit.

The Landlord had submitted evidence of a NSF cheque for the March 2018 rent which was rectified by the Tenant on March 23rd. The Tenant states that she accidentally wrote a cheque from a previous bank. The Landlord also presented evidence of a late payment which was in July 2018, after the Notice to End Tenancy was served.

When questioned further on late rent payments prior to the date of the Notice to End Tenancy, the Landlord provided the following information by verbal testimony, relying on information on his phone: Sept/17 paid Sept 3, Oct/17 paid Oct 2, Nov/17 paid Nov 2, Dec/17 paid Dec 5, Jan/18 paid Jan 3, and Feb/18 paid Feb 3.

The Tenant states that she banks through Manulife, which operates on a different banking system than traditional banks. She indicated that most of the rent payments were through e-transfer, and that the online system would often freeze up on the first of

each month, apparently because the system was overloaded with requests. As a result, her transfers did not process until a day or two later, corresponding with the Landlord's testimony.

Both parties expressed frustration at the state of the relationship, the Landlord wanting to terminate the tenancy and the Tenant stating that repairs are needed and that her front door key no longer works. The Landlord states he has not changed the lock on the front door.

Analysis

Section 47 of the Act permits a landlord to serve a One Month Notice to End Tenancy for Cause on a tenant for certain stated reasons, including being repeatedly late with rent. Under that section, a tenant has 10 days within which to file a dispute application with the Residential Tenancy Branch.

In considering this matter, I have reviewed the Landlord's One Month Notice to ensure that the Landlord has complied with the requirements as to the form and content of section 52 of the Act. I find that the Landlord's One Month Notice meets all of the requirements of section 52, and that it was served properly on the Tenant. Under section 90 of the Act, it is deemed received five days after it was mailed; I find that it was served as of May 27, 2018. The Tenant filed her dispute notice on May 30th, within the 10 day deadline required.

RTB Policy Guideline #38, provides the following guidance regarding the circumstances whereby 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...

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.

Section 26(1) of the Act establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the

regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” There is no dispute that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month.

The Landlord has provided verbal evidence that the Tenant was late in paying her rent on at least six occasions in the past year, and documentary evidence of a late payment in March 2018 due to an NSF cheque, all prior to the issuance of the One Month Notice on May 21, 2018. The Tenant does not dispute the Landlord’s testimony and explained that her bank repeatedly fails to process her online payments on time. The Tenant ought to have made alternate arrangements for payments many months ago instead of allowing the late payments to continue, jeopardizing her tenancy. I am satisfied there is a pattern of late rent payments throughout the months leading up to the Landlord’s issuance of this One Month Notice to End Tenancy.

Accordingly, I am satisfied that the Notice to End Tenancy is valid and binding; the Tenant’s Application to have it cancelled is dismissed. As the tenancy is to be terminated, I am not prepared to address her secondary issue of the problem with her key for the front door.

Conclusion

The Tenant’s Application is hereby dismissed without leave to reapply. The Landlord is granted an Order of Possession pursuant to section 55 of the Act, effective 1:00 pm on July 31, 2018.

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: July 25, 2018

Residential Tenancy Branch