



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CL 17719 GP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, FFT, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 16, 2018 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated November 6, 2018 (the "One Month Notice");
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2018 (the "10 Day Notice");
- For an order that the Landlord make repairs to the unit; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing with the co-tenant and witness. The witness exited the room until required. The agents for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions about the process when asked. The parties provided affirmed testimony.

Rule 2.3 of the Rules of Procedure (the "Rules") requires claims in an application for dispute resolution to be related to each other and allows arbitrators to dismiss "unrelated claims with or without leave to reapply".

I advised the Tenant at the outset that I would not consider the request for an order that the Landlord make repairs to the unit as it was not sufficiently related to the main issue before me being the dispute of the One Month Notice and 10 Day Notice. The request for an order that the Landlord make repairs to the unit is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The Agent confirmed the correct name of the Landlord and I amended the Application to reflect this. This is also reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Should the 10 Day Notice be cancelled?
3. If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession?
4. If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession?
5. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It names a different landlord. The Agent advised that the landlord changed in May of 2018 when the building was sold to the Landlord. The Agent confirmed the Landlord is the landlord in relation to the tenancy agreement. The Tenant agreed with this.

The tenancy agreement lists the tenants and occupants as the Tenant, co-tenant and two children. The agreement shows it was originally related to a different unit in the rental unit building but then transferred to the present unit October 1, 2008. The tenancy started January 7, 2008 and was for a fixed term of 12 months. The tenancy then became a month-to-month tenancy. Both parties agreed rent is currently \$795.00. The

tenancy agreement states that rent is due “monthly in advance on the 1st day of each month”. The agreement is signed on behalf of the Landlord and by the Tenant.

The One Month Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of December 7, 2018. The reason for the One Month Notice is that the Tenant is repeatedly late paying rent. The One Month Notice outlines the months the Tenant was late paying rent. The Tenant did not take issue with the form or content of the One Month Notice other than that it does not include the co-tenant.

The parties agreed the Agent served both pages of the One Month Notice on the Tenant personally on November 7, 2018.

The Tenant confirmed she filed the Application November 16, 2018.

The One Month Notice states that 10 Day Notices to End Tenancy for Unpaid Rent or Utilities had been served on the following dates:

- June 4, 2018 for June rent
- July 3, 2018 for July rent
- November 6, 2018 for November rent

The Agent testified that there is a consistent set time that the Landlord collects rent. He said the Landlord has told tenants that if they cannot make the set time, they can put the payment under the door of one of the rental units and the Landlord will collect it from there. The Agent testified that the Landlord then collects the payments from the specified rental unit up until midnight.

The Agent testified that he became involved with the rental unit at the beginning of June and therefore can only speak to the late rent payments noted above. The Agent noted that the November late payment was due to the Tenant's cheque being returned due to insufficient funds.

The Tenant acknowledged receiving the three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities noted above and agreed with the dates noted.

In relation to June rent, the Tenant testified that she was confused about paying rent because of the change in landlords. She said the Landlord only provided a two-hour window to pay rent in June. The Tenant testified that she could not make the two-hour

window. The Tenant said the tenants were not provided with the option of sliding the payment under the door of a specified rental unit in June. She said she was unsure of where to drop off the cheque.

I asked the Tenant why she could not make the two-hour window and she said she was working. I asked why the co-tenant or one of the occupants did not pay the rent. The Tenant spoke about the age of the occupants. She did not explain why the co-tenant could not have paid the rent. When asked again about why the co-tenant did not pay the rent, she said she had to get a money order for June rent and that she had not done so. She testified that she could not make it to the bank on June 1st. The Tenant acknowledged that the Landlord does not require rent to be paid by money order. She said she did not have a cheque because she had misplaced her cheques.

The Agent testified that the Tenant paid June rent before June 11th. The Tenant agreed she paid June rent between June 5th and 11th.

In relation to July rent, the Tenant testified that she dropped the rent cheque off as required but had post-dated it for July 5, 2018. I asked the Tenant why she post-dated the cheque and the only explanation she gave was that she had to.

In relation to November rent, the Tenant took the position that she paid rent on time but that the bank returned the cheque. She testified that an accident happened, "something went through" and that she replaced the cheque immediately. She testified that she took the Landlord a money order as soon as the weekend was over. The Tenant confirmed that November rent was late because the cheque she issued to the Landlord did not go through due to insufficient funds. The Tenant said she thought there were sufficient funds in her account. I understood her to say that funds were unexpectedly taken from her account for another financial obligation and therefore there were insufficient funds for the rent cheque to go through.

The Tenant testified that she was a caretaker for the building for eight years and that she always accepted rent a few days late. She said she would give tenants reminders about the rent. She said she did not think the Landlord would be so strict about late rent payments. The Tenant acknowledged that she knew the Landlord had changed in June. She said the Landlord should have informed tenants that they were going to be strict about the timing of rent payments.

I asked the Tenant if she had received 10 Day Notices to End Tenancy for Unpaid Rent or Utilities from the previous landlord prior to June of 2018 and she said she had

received one or two. The Tenant testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the previous landlord around April of 2018.

The Tenant did not take the position that she had authority under the *Act* to withhold rent other than \$100.00 in November pursuant to a prior arbitration. The Agent agreed rent for November was reduced by \$100.00.

The Tenant submitted that the Landlord has ulterior motives for ending the tenancy. She said the Landlord is trying to get rid of tenants so that the Landlord can renovate. She submitted that this is what is driving the Landlord to be so strict about late rent payments.

The co-tenant was given an opportunity to speak. His testimony did not add anything to the testimony of the Tenant. He referred to the Landlord suddenly pushing hard about timing of rent payments.

The Tenant called the witness who was affirmed. I allowed the Tenant to ask the witness questions. The witness testified that he has lived in the building for eight years and has paid rent late two or three times and never received an eviction notice. The witness testified that there was confusion about where to pay rent in June because of the change in landlords. He said he contacted the Agent and was told the rent could be dropped off at the office or at the specified rental unit. The witness testified that the tenants were not told that the Landlord would be enforcing the timing of rent payments.

The Agent did not have questions for the witness.

I told the witness he could exit the room again once done. The witness asked if he could make a statement. I did not allow him to do so as the Tenant had been given the opportunity to ask the witness questions and had done so. The witness is not a party to these proceedings. I did not find it appropriate for the witness to provide testimony or submissions that were not elicited by the Tenant.

In reply, the Agent testified that the Landlord realised on June 1st that tenants could be confused about where to pay rent. He said the Landlord told tenants they could slide rent payments under the office door. The Agent testified that the Landlord posted notices in four spots throughout the rental unit building about rent payments. He said someone was available from 7:30 am to 10:30 am and 6:30 pm to 8:30 pm to collect rent and that this was noted.

In relation to the Tenant's argument about the Landlord having ulterior motives to end the tenancy, the Agent testified that the Landlord is dealing with tenants who are paying rent late and is simply exercising their right to do so.

I asked the Tenant if she agreed with the testimony of the Agent in relation to the notices posted June 1st. She said she did not remember. The Tenant testified that she thought there was a two-hour time frame for paying rent. She testified that she saw the notices. She then said she did not know if she saw the notices or if she is thinking of notices from subsequent months.

I obtained evidence from the parties in relation to the 10 Day Notice which I will not detail here given my decision on the One Month Notice. I do note that the parties agreed the Tenant paid November rent on November 6th.

The Agent sought an Order of Possession effective at the end of February based on the One Month Notice.

The Tenant submitted documentation in relation to a prior arbitration as well as correspondence between the parties. This documentation relates to the Tenant's submission that the Landlord has ulterior motives for ending the tenancy.

The Tenant submitted a witness statement from the witness. It speaks to the prior "policy" of the landlord when tenants paid rent late. It states that the Landlord did not notify the tenants that there would be a stricter policy moving forward. It notes the renovation issue and states that the witness believes the stricter stance on late rent payments is to achieve vacant possession of the rental units.

The Tenant submitted a second statement from a friend. This states that the previous landlord allowed tenants to pay rent up to three days late. It says that the new Landlord gives tenants no leeway. The statement says the writer believes the Landlord is jumping at any chance to empty the rental units in the building.

The Landlord had submitted copies of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities for June, July and November.

I do not find the remainder of the evidence relevant.

Analysis

Section 26(1) of the *Act* states as follows:

26 (1) 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.

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy if tenants repeatedly pay rent late. A tenant may dispute a notice to end tenancy issued under section 47 of the *Act* within 10 days of receiving the notice.

There is no issue that the Tenant received the One Month Notice November 7, 2018. I accept the testimony of the Tenant that the Application was filed November 16, 2018 as this is what our records show. I find the Tenant disputed the Notice within the time limit set out in section 47(4) of the *Act*.

Policy Guideline 38 addresses repeated late payment of rent and states in part:

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. 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.

I do not accept that the reasons for the late payments provided by the Tenant amount to exceptional circumstances or otherwise excuse the Tenant from her obligation to pay rent on time.

In relation to June rent, I do not accept that confusion caused by a change in landlords is a sufficient reason for the Tenant’s failure to pay rent on time. I accept the testimony of the Agent that notices about payment of rent were posted on June 1st as the Tenant

did not dispute this, she said she could not remember if this was the case. The notices should have cleared up any confusion. Further, if the Tenant was confused about where or how to pay rent, she should have contacted a representative for the Landlord as the witness did. I note that the Tenant did not pay rent for at least three more days. I do not accept that this was due to confusion about where or how to pay rent and do not accept that this was the reason for the late payment.

The Tenant testified that the Landlord only provided a two-hour window to pay rent and she could not make it because she was working. The Tenant did not explain why the co-tenant could not pay rent on June 1st despite being asked twice during the hearing about this. Further, when asked why the co-tenant could not pay rent on June 1st, the Tenant said she had to get a money order, had not done so and could not go to the bank on June 1st. The Landlord does not require tenants to pay rent by money order and therefore I do not find the Tenant's choice to obtain a money order relieves her of her obligation to pay rent by the first of the month.

Further, I do not accept that being unable to attend the bank to get a money order is a sufficient explanation. Situations that are foreseeable and can be considered, such as availability of cheques, work hours, bank hours or processing times are not sufficient reasons to not pay rent on time. Tenants are required to be prepared to pay rent when it is due under the tenancy agreement and should plan accordingly.

I find that the Tenant paid rent late for June and that none of the reasons for this late payment provided amount to exceptional circumstances or relieve the Tenant of her obligations under the *Act* and tenancy agreement.

In relation to July rent, the Tenant testified that she dropped the rent cheque off as required but had post-dated it for July 5, 2018. This is clearly a late payment of rent as the Landlord could not receive the funds until July 5, 2018. The Tenant did not provide an explanation as to why the cheque was post-dated other than to say she had to post-date it. This is not a sufficient explanation. I find the Tenant paid rent late for July without a sufficient basis for doing so.

In relation to November rent, I do not accept that the Tenant paid rent on time. The Tenant explained that she thought she had sufficient funds in her bank account but that funds were used for another financial obligation and therefore the rent cheque did not go through. This was not a bank error as it was not the bank's actions or neglect that resulted in the cheque not going through or there being insufficient funds in the account. The obligation of the Tenant is to pay rent by the first of each month and to ensure that

she has sufficient funds to cover rent cheques that are issued to the Landlord. Having insufficient funds due to funds being removed from an account for other financial obligations is not an exceptional circumstance and does not relieve the Tenant from her obligation to pay rent as required by the *Act* and tenancy agreement.

I find that the Tenant paid rent late for November and do not find the reason to amount to exceptional circumstances or to relieve the Tenant of her obligations under the *Act* and tenancy agreement.

I acknowledge the evidence submitted about the previous landlord being lenient about the timing of rent payments and the Landlord being strict in this regard. However, I do not find it reasonable that the Tenant thought paying rent late was acceptable. I do not find it relevant that the Tenant was a caretaker for the building and accepted late rent payments. I do not find it reasonable to assume that her response to late rent payments is the same as the Landlord's response. Nor is it reasonable to assume that the Landlord's response was going to be the same as the previous landlord. I do not accept that landlords have an obligation to remind tenants to pay rent. Nor do I accept that the Landlord had to give notice to tenants that they would be enforcing their rights under tenancy agreements and the *Act*. The tenancy agreement and *Act* are clear about when rent is to be paid. Tenants are expected to know their obligations under both.

Further, the Tenant acknowledged receiving one or two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities from the previous landlord prior to June. I do not accept that the Tenant could have been under the impression that paying rent late was acceptable when prior late rent payments lead to her being issued 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. Notably, the Tenant acknowledged that she received such a notice around April of 2018, a few months prior to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued in June. I do not find it reasonable that the Tenant would think paying rent late in June and July was acceptable when she had received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities so recently prior to June of 2018.

Further, the Tenant paid rent late in July when she had been issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for a late payment in June. The Tenant had no valid basis for paying rent late in July. I cannot accept that the Tenant thought paying rent late was acceptable in these circumstances.

I note that the authority to withhold \$100.00 of rent in November is not relevant to the analysis as the Tenant failed to pay the entire rent amount for November by

November 1st.

I acknowledge the submissions and evidence of the Tenant in relation to the Landlord having ulterior motives to end the tenancy. However, whether the Landlord has an ulterior motive or not, I do not find this relevant. The Landlord is permitted to enforce the tenancy agreement and their rights under the *Act*. Here, there is no question that the Tenant paid rent late in June, July and November. This entitled the Landlord to issue the One Month Notice. The presence of ulterior motives does not invalidate the One Month Notice given the nature of the cause.

I find that the Tenant paid rent late in June, July and November. I am satisfied that the Tenant is repeatedly late paying rent. I note that the Tenant paid rent late three times within six months which I consider to be a short period of time. Further, the Tenant paid rent late for two consecutive months. I do not find the reasons for the late payments provided by the Tenant to amount to exceptional circumstances or to provide a reasonable basis for cancelling the One Month Notice.

I note that the One Month Notice was served on the Tenant personally and therefore in accordance with section 88(a) of the *Act*.

I have reviewed the One Month Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*. The Tenant did not take issue with the form or content of the One Month Notice other than that it does not include the co-tenant. I do not find that the Landlord was required to include the co-tenant on the One Month Notice. The One Month Notice will apply equally to all tenants and occupants under the tenancy agreement. Failing to name a co-tenant does not invalidate a notice to end tenancy.

Given I have found that the Tenant is repeatedly late paying rent, I dismiss the dispute of the One Month Notice without leave to re-apply and uphold the One Month Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession where a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the One Month Notice and upheld the One Month Notice. I have also found that the One Month Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession. The Agent asked that the Order of Possession be effective at the end of February and therefore it will be effective at 1:00 p.m. on February 28, 2019.

Given my decision in relation to the One Month Notice, I do not find it necessary to comment on the 10 Day Notice.

Given the Tenant was not successful in this application, I decline to award her reimbursement for the \$100.00 filing fee.

Conclusion

The request for an order that the Landlord make repairs to the unit is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The One Month Notice is upheld and the dispute is dismissed without leave to re-apply.

I do not find it necessary to comment on the 10 Day Notice given my decision on the One Month Notice.

The Tenant is not entitled to reimbursement for the filing fee.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on February 28, 2019. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court. The Order applies equally to all tenants and occupants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 07, 2019

Residential Tenancy Branch