



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLENWOOD HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 28, 2019 ("One Month Notice").

The Tenant and an agent for the Landlord, J.O., (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the Tenant provided her email address and the Agent provided his mailing address, and they confirmed their understanding that the decision would be sent to both Parties at these addresses.

The Agent explained that the name of the landlord on the One Month Notice does not correspond with the landlord identified in the tenancy agreement, because [T.H.] was the landlord when the Tenant first moved here, and there have been four landlords since she moved in, in 2011. The Parties confirmed that the landlord identified on the One Month Notice is the current landlord of the rental unit (the "Landlord").

Issue(s) to be Decided

- Is there a valid reason to cancel the One Month Notice under the *Act*?
- If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Parties confirmed that the tenancy started on November 1, 2011. They agreed that the Agent taped the One Month Notice to the Tenant's door and slid another copy of it under the Tenant's door on January 28, 2019. The effective vacancy date on the One Month Notice is March 1, 2019. On the second page of the One Month Notice a box is checked indicating that the ground for the eviction being the "Tenant is repeatedly late paying rent."

The Parties agreed that the Tenant was late paying rent on January 1, 2019 and that she had been late paying rent in January 2016, August 2016, and March 2018,

The Tenant said the Landlord does not have an electronic means of accepting rent payments, so the Tenant has to go to the bank to get money to put in an envelope and drop through the office door every month. She said that she was sick with pneumonia at the beginning of January 2019, so she could not go out to get the money and drop it off, as usual. The Tenant said she did this on January 4, 2019, and that she had someone with her, who could attest to this, although this person was not at the hearing to testify.

The Agent said that the Tenant could have called him or had a friend drop by the office to tell him that the rent would be late, because the Tenant was sick, but she did not do this. The Agent said that he usually checks the office drop box at about 8:00 p.m. each night.

In the hearing, the Agent was focused on the fact that the Tenant did not pay the \$50.00 late fee that is required of tenants by the Landlord when rent is late. The Agent said: "The Landlord wants her [the Tenant] to leave the building for the \$50.00 late fee. If one person doesn't have to pay it, it would turn into one big snowball." He went on: "I live in the building and I'm sorry she was sick, but there was no communication with me at all."

The Tenant said: "I didn't know that this whole One Month Notice of eviction is based on the late fee. Also, there's something that I looked up and it says a late fee should be \$25.00 and should be written into the [tenancy] agreement that there will be a fee charged if you are late, and it is not in my tenancy agreement. As for what the late fee is, I have only seen that it should be \$25.00. I didn't know that this notice was based on a \$50.00 late fee."

The Agent directed my attention to clause 10 of the Tenant's tenancy agreement he had submitted, which states: "Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus any amount of any service fees charged by a financial institution to the landlord." There was no evidence before me from the Landlord of his being charged any kind of service fee by a financial institution.

The Agent said that he's had the job for nine months and that with any new tenants, the fee in their tenancy agreement is \$50.00. He said he has not seen the tenancy agreement that was used by the former landlord for the Tenant. He said: "She is right, it says \$25.00. And if that's the case, I want to know why she didn't approach me and ask why is it \$50.00?" He said that the owner is "mad about her not ever approaching us about the \$50.00. She just should have come to say, '[J.], I don't agree with this' and disputed the \$50.00 late fee."

The Tenant said, "It wasn't anything that I had to approach him about, because I paid the rent. I just wasn't thinking that it was necessary to talk to the Landlord about a \$50.00 fee. I view it more as a threat of a \$50.00 late fee, if you don't pay the rent soon. That's how I approached it."

Analysis

Section 47(1) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: "(b) the tenant is repeatedly late paying rent". Further, Residential Tenancy Branch Policy Guideline 38, "Repeated Late Payment of Rent" states:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* 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. 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.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant acknowledged that she was three or four days late in paying her rent in January 2019; however, she explained that it was unforeseen and because she was sick on January 1, 2019, although she did not provide any documentary evidence to support her pneumonia diagnosis.

However, the last two times prior to January 2019 that the Tenant was late paying her rent were nine months prior in March 2018 and nearly two years prior to that in August 2016. I find that these circumstances are not sufficiently contemporary to mean the Tenant has been “repeatedly late” pursuant to the *Act* and Policy Guideline 38.

Further, the testimonial evidence before me in the hearing was that the Landlord wanted to evict the Tenant, because she did not pay a \$50.00 late fee, which is not a ground under the *Act* to issue a One Month Notice. In addition, the Tenant’s tenancy agreement states that the late fee will not be more than \$25.00.

In terms of the Landlord’s late rent fee, the Residential Tenancy Regulation (“Regulation”) sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;**
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

. . .

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

I find that the Tenant has not been “repeatedly late paying rent” as section 47 of the Act is interpreted by Policy Guideline 38. I further find that even if the Tenant was repeatedly late in paying her rent, this was not the reason that the Landlord had the Agent serve the One Month Notice. Rather, the Landlord’s reason for trying to evict the Tenant was because she did not pay a \$50.00 fee, which was not authorized by the tenancy agreement or by section 7 of the Regulation.

Based on the above, I find that the Landlord has failed to establish a cause under section 47 of the *Act* to end the tenancy, and I order that the One Month Tenancy dated January 28, 2019, be cancelled.

Conclusion

I order that the One Month Notice dated January 28, 2019, be cancelled and that the tenancy continue in full force and effect until it is cancelled 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: March 16, 2019

Residential Tenancy Branch