



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 7, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

It should be noted that although I heard some evidence from the tenant’s witnesses, that testimony was not recorded as none of the tenant’s witness had any direct evidence that would have impacted my decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2017. Rent in the amount of \$1,325.00 was payable on the first of each month. The tenant paid a security deposit of \$625.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on February 28, 2019.

The reason stated in the Notice was that the:

- Tenant is repeatedly late paying rent.

The landlord's agent testified that the tenant has been late paying rent on several occasions.

The landlord's agent testified that the tenant's rent cheque for February 2018, was returned for insufficient funds. The landlord stated that the tenant's cheque that was issued to preplace the NSF cheque was also returned for insufficient funds. Filed in evidence are banking documents to support both cheques were returned due to insufficient fund.

The landlord's agent testified that rent for May 2018, was paid by part cash and cheque. The agent stated that the tenant placed a stop payments on the cheque. Filed in evidence is a copy of the banking documents to support a stop payment was placed on the cheque.

The landlord's agent testified that rent for June 2018, was paid rent late as it was not cleared until June 15, 2018. The agent stated they do not have a copy of the tenant's cheque.

The landlord's agent testified that the tenant issued a cheque for November 2018, on November 6, 2018. The landlord stated that there was also a stop payment placed on the cheque. The agent stated that the tenant paid rent on November 15, 2018, by cash.

The landlord's agent testified that rent for January 2019, the tenant's placed a stop payment on the cheque. The agent stated that tenant made a partial payment on January 4, 2019 and the balance on January 5, 2019.

The tenant testified that in February 2018, their bank account was hacked. The tenant stated that has sent the landlord another cheque; however, when they were at the bank

they notice the cheque had not cleared and placed a stop payment on the cheque, only because they obtain a bank draft for rent.

The tenant testified that they informed the landlord that they would be late paying rent for May 2018, by 4 or 5 days. The tenant stated that the landlord consented to the late payment and they should not be penalized due to obtaining prior consent. The tenant stated that they were at the bank on May 8, 2018, and the cheque had not gone through, so they placed a stop payment and gave the landlord a bank draft. The tenant stated the rent was paid on May 8, 2018. Filed in evidence is an email.

The tenant testified that they were out of the country when rent for June 2018, was due. The tenant stated that they had given the landlord a cheque and their banking information. The tenant stated they contacted the landlord's agent who informed them that they have misplaced the documents. The tenant stated they sent the landlord a cheque as soon as they were aware of the problem. Filed in evidence is a copy of bank draft.

The tenant testified that they informed the landlord that on November 1, 2018 that they had to leave the country due to a serious family emergency. The tenant stated that they issued a cheque to the landlord dated November 6, 2018. The tenant stated while they were away they could not transfer money into the account because the person at the bank had made changes to the name on the account. The tenant stated that they paid the rent on November 15, 2018.

The tenant testified that they were concerned about the cheque they had issued for January 2019, rent because of an earlier stop payment that was made by the bank. The tenant stated they contact the bank and they were told it would not be an issue. The tenant stated they contact the landlord to inform them that if they had any issues with the cheque that they could come to her rental unit and get the cash as they had money in the safe.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Tenant is repeatedly late paying rent.

Section 26 of the Act, states,

Section (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.

The Residential Tenancy Policy Guideline #38 states,

The *Residential Tenancy* 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

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.

The banking record submitted as evidence show the tenant’s cheque for February 2018, was returned due to insufficient funds. Even if I accept the tenant’s evidence that their bank account was hack, which I am not satisfied, as did not provided a letter from their financial institute to support this.

However, it was the tenant's responsibility to ensure their replacement cheque was negotiable at the time it was issued. That cheque was also returned for insufficient funds. I find the tenant was late paying rent for February 2018.

May 2018, rent was paid by giving the landlord part cash and the balance by cheque that was dated May 4, 2018. Even if I accept the tenant was given permission to be late paying May 2018, rent by 4 or 5 days. That does not mean the rent was not late.

Further, the tenant placed a stop payment on the cheque that was previously issued on May 4, 2018. That has the same effect as if it was never paid. I find rent was not paid until May 8, 2018. I find the tenant was late paying rent for May 2018.

June 2018, rent, although the landlord was unable to provide a date of when they received the rent money. I have reviewed the tenant's evidence. The documents show that the landlord was issued a bank draft on June 8, 2018. I find the tenant was late paying rent for June 2018.

The evidence of the tenant was that they had permission from the landlord to be late paying November 2018; however, the email the tenant submitted in evidence dated November 1, 2018, does not support that. The email tells the landlord that they have a family emergency and they will send a cheque dated November 6, 2018. Simply because the landlord did not object does not mean the tenant had the consent from the landlord or that their rent was not late. The tenant could have issued a cheque for November 1, 2018. I find the tenant was late paying rent for November 2018.

The documents for January 2019, rent, show that there was a stop payment on the cheque. I do not accept the financial institute would place a stop payment on a cheque. Rather than to hold the cheque until it was verified. Further, the tenant has not provided any documentary evidence from the bank, that it was the direct fault of the bank and not the fault of the tenant.

Furthermore, the evidence of the tenant was that they had the money in their safe. That was not correct as they made a partial payment on January 4, 2019 and the balance was paid the next day. I find the tenant was late paying rent for January 2019.

It is clear by the evidence of both parties, that the tenant would issue cheques which were cancelled or stop payments were made. It is the tenant's responsibility to ensure rent is paid and received by the landlord on the day it is due under their tenancy agreement.

Based on the above, I am satisfied that the tenant has been late paying rent on at least three occasions. I find the Notice issued on January 7, 2019, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice. I find the tenancy has legally ended on February 28, 2019, in accordance with the Act.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession, pursuant to section 55 of 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 7, 2019

Residential Tenancy Branch