



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and an agent for the tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

The Rules of Procedure require that multiple applications made in a single application must be related to the primary application, which in this case is disputing a One Month Notice to End Tenancy for Cause. Therefore, I dismiss the balance of the tenants' application with leave to reapply.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and more specifically the reason for issuing it: repeated late rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 17, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$680.00 per month was payable at the beginning of the tenancy, which was a promotional amount for the first 6

months and then was raised to \$750.00 per month, and there are no rental arrears. Rent is due on the 1st day of each month and the landlord collected a pro-rated amount for the first partial month of the tenancy. The landlord also collected a security deposit from the tenants in the amount of \$340.00 at the commencement of the tenancy which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is one of 4 townhouse units, and the landlord does not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on March 29, 2019 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by registered mail, and a copy has been provided for this hearing. It is dated March 29, 2019 and contains an effective date of vacancy of April 30, 2019. The reason for issuing it states: "Tenant is repeatedly late paying rent." The landlord received rent for August, 2018 on the 9th of the month; rent for December, 2018 was received on December 4, 2018; and rent for January, 2019 was received on the 10th of January. When asked if the landlord refused to accept e-transfers, the landlord replied that he deposits cheques.

The landlord submits that the onus is on the tenants to prove when the landlord received the rent cheques and reiterated that previous Arbitrators put the onus on the landlord, and that I should not be "selective" and I should grant an Order of Possession in favour of the landlord.

The tenant's agent testified that there have been 3 previous hearings between the parties about the payment of rent. The first was on September 24, 2018 wherein the tenants had applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Notice was cancelled at Arbitration.

The second hearing was on March 8, 2019, again dealing with the tenants' application to cancel two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The Arbitrator ruled that since the landlord served the notices after rent was paid, the notices were of no effect.

The third hearing was on April 18, 2019 concerning an application made by the landlord seeking an Order of Possession which was denied at Arbitration because it had already been ruled upon at the March 8, 2019 hearing.

The tenants have provided post office receipts showing that the rent cheques were mailed to the landlord on November 27, 2018. The tenants send the rent cheques to the landlord by regular mail on the 27th of each month. However, the landlord has made every attempt to not accept rent on time. The tenants have attempted to pay by e-transfer and to have automatic debits taken from their account, neither of which has

been accepted by the landlord. Nothing in the tenancy agreement states how rent is to be paid.

The tenants have also provided a dated time-line of events which the tenant testified is true to the best of her knowledge and belief.

The tenant submits that there is no evidence from the landlord to establish when the rent cheques were received. The landlord wants the tenants to send the cheques to an address of the landlord in the same community as the rental unit, but the landlord doesn't live there so the mail would be forwarded to another City. The landlord testified that he received the rent on December 4, 2018, but evidence shows that he didn't deposit the cheque until January. He's done what he can to sabotage this tenancy knowing that he could rent for a much higher amount.

Analysis

The landlord is incorrect about "onus." Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord, not on the tenant, to establish that the notice was given in accordance with the *Residential Tenancy Act*, which can include the reasons(s) for issuing it. I found the landlord's testimony and submissions to be very accusatory, that an Arbitrator of the Residential Tenancy Branch would be "selective" in decision making.

I have reviewed the Decisions of the director described by the tenants' agent to ensure that I do not make any findings or Decisions that have already been adjudicated upon, particularly considering the testimony of the tenants' agent that the last hearing concerned an application made by the landlord for an Order of Possession when the matter had already been heard.

- The hearing on September 24, 2018 concerned the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant had testified that rent was initially paid in cash at the landlord's request, then in June, 2017 requested e-transfers and the tenants complied. On July 25, 2018 the landlord requested cheques, but the tenants didn't have cheques and the wait time to order some from the financial institution was about a month, so the tenants paid for and mailed to the landlord a money order on August 7, 2018. The notice to end the tenancy was received the following day by registered mail. The landlord had testified that in June, 2018 his internet service "went down" and advised the tenants in writing to pay by cheque, which was rejected by the tenants. The landlord rejected the tenants' suggestion to pay by pre-authorized

debit. The notice to end the tenancy was cancelled because the tenants paid the rent within 1 day of receiving the notice, and the tenants were awarded recovery of the \$100.00 filing fee from the landlord.

- The hearing on March 8, 2019 also concerned an application made by the tenants for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord had testified that rent for December, 2018 was received on the 4th of the month, and the tenant had testified that it was mailed to the landlord on November 27, 2018. It also states that the landlord had testified that he received rent for January, 2018 on the 10th of the month, and the tenant had testified it was mailed on December 27, 2018. The undisputed testimony of the parties confirmed that the landlord issued 2 notices to end the tenancy, on January 11 and January 16, 2019, but since rent had been paid prior to the issuance of either notice, the rent was paid in full. Both notices were cancelled and the tenants were permitted to withhold \$100.00 from rent as recovery of the filing fee.
- The hearing on April 18, 2019 resulted in a written Decision dated April 19, 2019 which concerned an application made by the landlord seeking an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenant. The Arbitrator found that the landlord's application was based on 2 notices to end the tenancy and that both notices were dealt with on March 8, 2019. The Arbitrator did not re-hear matters already dealt with and the landlord's application was dismissed without leave to reapply.

I have also reviewed the tenancy agreement, which specifies that rent is payable on the first day of each month, but does not specify how rent is to be paid.

A minimum of 3 late payments is required to justify ending a tenancy for repeated late rent. A landlord may not refuse rent. In this case, the landlord testified that rent was late on August 9, 2018; December 4, 2018 and January 10, 2019, which are the same dates that the landlord issued notices to end the tenancy for unpaid rent that were the subject of the previous hearings. However, the landlord has not provided the evidence of when the cheques were actually received, and doesn't even live in the same community where the tenants are required to send the rent to. Instead, the landlord wishes to place the onus on the tenants to establish when the landlord received them.

The tenancy began on March 17, 2017 and the undisputed testimony of the tenant is that rent was paid by e-transfer until the landlord said he could no longer accept e-transfers on July 25, 2018. On July 29, 2018 the tenant delivered a signed pre-authorized debit form to the landlord's home, who replied refusing to accept automatic debits for rent and suggesting that the tenants move out on August 31, 2018. The

landlord has not returned the signed Pre-Authorized Debit Plan form to the tenants. There is nothing to satisfy me that the landlord had or has any reason to deny automatic debits, and as such has refused to accept rent on every occasion since July, 2018. Where a landlord refuses to accept rent, the landlord cannot claim repeated late rent. The One Month Notice to End Tenancy for Cause is cancelled and the tenancy continues.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in that amount and order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 29, 2019 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The balance of the tenants' application is hereby dismissed with 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: May 25, 2019

Residential Tenancy Branch