



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHATEAU GARDENS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47;
- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

Both parties attended the hearing. The landlord was represented by BT ("landlord"). The landlord confirmed he received the tenant's Notice of Dispute Resolution and evidence, the tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

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 testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenant's other issue of a monetary order for compensation and dismissed the monetary order claim with leave to reapply.

Issue(s) to be Decided

Should the One Month Notice be cancelled?
Is the tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was supplied by the parties. The fixed, one year tenancy began on August 1, 2018 with the tenancy to be continued on a month to month basis at the end of the fixed term. Rent was set at \$795.00 per month. Clause 10 states late payments of rent are subject to an administration fee of not more than \$25.00 per instance and returned or non-sufficient fund cheques are subject to an administration fee of not more than \$50.00 plus the amount of any service fee charged by a financial institution to the landlord. Both parties signed the tenancy agreement on August 1, 2018 and the tenant signed schedules A-E, referred to in section 42 of the tenancy agreement. Schedule "A", paragraphs 2 and 3 restate the late fees and insufficient fund fees to be imposed upon the tenant.

The landlord provided the following testimony. When the tenancy began, rent was set at \$795.00 as set out in the tenancy agreement, however parking in the amount of \$15.00 per month was not shown as being included because the building's tenants are inconsistent in wanting parking and not wanting parking. On August 7, 2018, the tenant signed a pre-authorized payment plan allowing the landlord to debit her bank account \$810.00 per month which includes both the rent and the \$15.00 parking, commencing September 1, 2018. The tenant gave a void cheque to authorize the pre-authorized payment plan and it was explained to her that \$810.00 would be debited from her account. The form specifies:

"you the Payor authorize [landlord] to debit the bank account indicated above \$810.00 on the 1st of every month or the next business day. Rent: \$795.00/ Parking \$15.00"

On November 15, 2018, the tenant signed another pre-authorized payment plan form which included the same terms for a total of \$810.00 rent and parking because she switched banks. It was explained to her again that the total would be \$810.00. Copies of the preauthorized payment plan forms, signed by the tenant were supplied as evidence.

The preauthorized debit of \$810.00 for September's rent was returned as insufficient funds by the tenant's bank. The tenant provided a cheque in the amount of \$550.00 on September 17th and a further cheque in the amount of \$245.00 on September 20th, a total of \$795.00. Copies of the cheques were provided as evidence. The landlord waived the late fees and the parking fee as they were unable to provide a parking spot for the tenant at the time.

The October preauthorized debit of \$810.00, taken from the tenant's bank on October 1st was also declined due to insufficient funds. On October 4, 2018, the tenant paid \$662.00 by cheque and a further \$133.00 by cheque on October 5th. Copies of these cheques were also provided as evidence.

The November preauthorized debit for \$795.00 was declined due to insufficient funds. The tenant paid November rent in the amount of \$795.00, together with a \$50.00 insufficient fund fee and a \$25.00 late fee, a total of \$870.00 by debit on November 9, 2018.

The December 2018 rent was also returned as insufficient funds by the tenant's new bank, as she had switched banks. The tenant paid a total of \$885.00 to the landlord on December 7, 2018, representing insufficient fund fees, late fees and parking.

The landlord documented no instances of late payment of rent for January, however provided testimony as to instances of late payments in February and March, 2019. On March 7, 2019, the landlord served the tenant with a One Month Notice to End Tenancy for Cause ("Notice") by posting it to her door. The reason for ending the tenancy on the form is: *tenant is repeatedly*

late paying rent. The tenant acknowledges receiving the Notice some time between March 7 and March 10th and filed for dispute resolution on March 18, 2019.

The tenant testified the preauthorized payment plan forms she signed did not depict that she was paying \$810.00, represented as \$795.00 in rent and \$15.00 in parking. She testified that she signed the form blank before any amounts were filled in; the totals were filled in after she signed the form. The tenant also disputes that the landlord was the authorized party to fill in the form as it should have been her who fills in the blanks.

The tenant submits that she was unaware that the rent should be greater than \$795.00 per month, though she does not dispute to using the parking lot and that she 'really wanted a covered spot'.

The tenant describes the difference between the rent shown in the tenancy agreement and what she is expected to pay as an 'illegal rent increase' for which she was not given proper notice. She was confused why the landlord sometimes imposed fees for insufficient fund and late payments and sometimes did not. She has tried her best to pay on time but the additional fees of parking and other administration fees has made it difficult to keep track of how much she owes. She testified she always tells the landlord when she is going to be late in paying her rent.

Analysis

Section 26(1) of the *Act* clearly sets out the rules about payment and non-payment of rent. 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* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline PG-38 indicates **three late payments** are the minimum number of times sufficient to justify a notice under section 47.

While the tenant has argued that the preauthorized payment forms she signed did not indicate how much she was to pay, I find the tenant's position lacking in credence. The form is clearly pre-scribed with a notation of how much would be taken. I am satisfied 1) the tenant knew or ought to have known she is paying \$810.00 per month on the first day of each month for rent and parking 2) the tenant did not have those funds in her account to pay on the first day of the month on four separate occasions.

The landlord has shown, on a balance of probabilities, that the tenancy should be ended for the reasons identified on the Notice, that the tenant was repeatedly late paying rent. I uphold the landlord's Notice to End Tenancy for Cause.

Section 55 states If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the

effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As the tenant's application was unsuccessful, the tenant's application to recover the filing fee is also dismissed.

Conclusion

I grant an order of possession to the landlord effective two days after service on the tenant.

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 10, 2019

Residential Tenancy Branch