



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, OPR, CNC, MNR, MNDC, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to two notices to end tenancy for cause and for nonpayment of rent. The landlord also applied for a monetary order for unpaid rent in the amount of \$3,600.00 and for the recovery of the filing fee.

The tenant applied to cancel the notice to end tenancy for cause, and for an order directing the landlord to carry out repairs. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was accompanied by his agent. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Matters

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the tenant has applied for an order directing the landlord to carry out repairs. As this section of the tenant's application is unrelated to the main section which is to cancel the one-month notice, I dismiss this section of the tenant's claim with leave to reapply.

The landlord made this application on June 21, 2019 and applied for unpaid rent in the amount of \$3,600.00. He stated that the rent was for the months of June, July and August 2019. The tenant testified that she had paid rent for June on June 07, 2019 soon after she received the notice to end tenancy for non-payment of rent. During the hearing the landlord agreed that the tenant had paid rent for June 2019 prior to the date he made this application which included rent for June 2019. The landlord also agreed that the tenant was up to date on rent and therefore he withdrew his application for a monetary order.

Accordingly this hearing only dealt with the landlord's application for an order of possession and the tenant's application to set aside the notice to end tenancy.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started on October 31, 2016. The monthly rent is \$1,200.00 payable in advance on the 31st of the month.

On June 12, 2019, the landlord served the tenant with a notice to end tenancy for cause. The notice to end tenancy was served for the following reason:

- Tenant is repeatedly late paying rent

The landlord stated that the tenant has paid rent late every month since January 01, 2019 and filed into evidence a hand-written statement of dates on which the tenant paid rent. The tenant argued that she paid rent on the date it was due every month except for the month of June 2019, when she paid rent late. The landlord stated that he had text messages to support his testimony but had not filed copies of the messages into evidence.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy, applies.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. In this case, the tenant denied having paid rent late for the months that the landlord alleged that she did, and the landlord did not file copies of text messages that he referred to during the hearing, which he stated would support his testimony. Therefore in the absence of additional evidence to support his testimony, the landlord is unable to prove that the tenant paid rent late on at least three occasions.

Since 3 late payments is the minimum number required to serve a notice such as this one, I find that the landlord has not proven the reason to end the tenancy for cause and accordingly, I must set this notice aside.

The landlord has not proven his case and must bear the cost of filing his own application. The tenant is successful in her application and therefore I award the tenant the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: August 19, 2019

Residential Tenancy Branch