



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, DRI, FFT, LRE, MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 03, 2019 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated July 03, 2019;
- To dispute a rent increase that is above the amount allowed by law;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant filed amendments to the Application as follows:

- July 12, 2019 to dispute a One Month Notice to End Tenancy for Cause dated July 06, 2019;
- July 23, 2019 to dispute a One Month Notice to End Tenancy for Cause dated July 17, 2019; and
- August 06, 2019 to dispute a One Month Notice to End Tenancy for Cause dated July 30, 2019.

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions about the process when asked. The parties provided affirmed testimony.

The Landlord confirmed the rental unit address which is reflected on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and evidence. He raised an issue with the timing of service of written submissions prepared by the Advocate. He said these were served within six days of the hearing. He said he was not able to go through the submissions completely given the late service. I asked the Advocate why these were served late. She advised they are a response to the Landlord's submissions.

Rule 3.14 of the Rules of Procedure (the "Rules") requires an applicant to serve their evidence on the respondent not less than 14 days before the hearing. This applies to written submissions that are going to be relied on at the hearing.

I accept the written submissions were served on the Landlord late as neither the Tenant nor Advocate disputed this. I do not accept that the written submissions are simply a response to the Landlord's submissions or evidence as they contain submissions that are relevant and necessary to support the Application.

I find the Tenant failed to comply with rule 3.14 of the Rules. I exclude the written submissions. I accept the Landlord was not able to fully review them given the timing of service. I am satisfied admission of the written submissions would prejudice the Landlord.

The Tenant confirmed receipt of the Landlord's evidence.

Pursuant to rule 2.3 of the Rules, the only issues I addressed at the hearing were the disputes of the notices to end tenancy. The remaining issues, other than the requests for compensation and reimbursement for the filing fee, are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The request for compensation is a request for reimbursement for the \$100.00 filing fee and therefore will be considered under that issue.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary

evidence pointed to during the hearing and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the following notices to end tenancy be cancelled?
 - The 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated July 03, 2019 (the “10 Day Notice”);
 - The One Month Notice to End Tenancy for Cause dated July 06, 2019;
 - The One Month Notice to End Tenancy for Cause dated July 17, 2019; and/or
 - The One Month Notice to End Tenancy for Cause dated July 30, 2019.
2. If the notices to end tenancy are not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

There was no issue that there is a written tenancy agreement between the Landlord, Tenant and Tenant's husband. The parties agreed the tenancy started September 01, 2018 and is a month-to-month tenancy. The parties agreed rent is \$1,550.00 per month due in advance on the last day of each month.

The parties agreed the 10 Day Notice should be cancelled although they took different positions about why it should be cancelled.

There was no issue that the One Month Notice to End Tenancy for Cause dated July 06, 2019 (the “Notice”) was served on the Tenant in person July 06, 2019. The Tenant disputed this July 12, 2019.

The grounds for the Notice are that the Tenant is repeatedly late paying rent and has breached a material term of the tenancy agreement. The Tenant did not take issue with the form or content of the Notice.

The Landlord testified as follows. The Tenant paid rent late from January to April of 2019. The Tenant was issued a 10 Day Notice. The Tenant agreed to pay \$2,050.00 in

outstanding rent plus a further \$1,550.00 for rent by April 30, 2019. The Landlord agreed to cancel the hearing set for the 10 Day Notice. He did not make an agreement with the Tenant about the history of late rent payments. The late rent payments were not forgiven.

The Advocate submitted as follows. The Tenant agrees she paid rent late from January to April. The Landlord and Tenant came to an agreement about repayment and the Landlord cancelled the 10 Day Notice. The parties agreed to a payment plan and the Tenant abided by this. The Landlord waived his right to evict the Tenant based on the late rent payments by agreeing to a payment plan for the monies owing.

The Advocate relied on page 25 to 29 of the correspondence submitted to support the Tenant's position. The Tenant did not rely on any other evidence submitted. The Advocate pointed out that the Landlord acknowledged in his emails that he could issue a 10 Day Notice or a One Month Notice given the late rent payments.

I have reviewed page 25 to 29 of the correspondence submitted. These pages include emails between the Landlord and Tenant dated April 10, 2019, April 12, 2019 and April 13, 2019. The emails include the 10 Day Notice issued to the Tenant in March of 2019.

Analysis

By agreement of the parties, the 10 Day Notice is cancelled.

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy for repeated late payment of rent. A tenant may dispute a notice to end tenancy issued under section 47 of the *Act* within 10 days of receiving it pursuant to section 47(4) of the *Act*.

There is no issue the Tenant received the Notice July 06, 2019. The amendment disputing the Notice was filed July 12, 2019, within the 10-day time limit.

Policy Guideline 38 deals with repeated late payment of rent and states in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions...

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.

There is no issue the Tenant paid rent late from January to April of 2019, for four consecutive months. I am satisfied the Tenant has repeatedly paid rent late.

The Advocate submitted that the Landlord waived his right to end the tenancy pursuant to a One Month Notice based on repeated late payment of rent by agreeing to a payment plan for the outstanding rent and cancelling the 10 Day Notice issued in March.

The Landlord took the position that he did not waive his right to end the tenancy based on the Notice as there was no agreement made between the parties about the history of late rent payments.

A waiver of a right, including the right of a landlord to end a tenancy over repeated late payment of rent, must be clear and unambiguous.

I have read the emails between the parties from April 10, 12 and 13 of 2019. I do not accept that the Landlord waived his right to end the tenancy pursuant to the Notice.

The email communications are about outstanding rent as of April 10, 2019 and the 10 Day Notice issued in March. The emails must be read in that context. The emails are not about a One Month Notice issued for repeated late payment of rent or the Notice. The Landlord did not state in the emails that he would not issue the Tenant a One Month Notice based on repeated late payment of rent, that the late payments were forgiven or a similar statement. The Tenant did not confirm in the emails that the Landlord would not issue a One Month Notice based on repeated late payment of rent or would forgive the past late payments.

The Landlord issued a 10 Day Notice in March. The Landlord made a number of comments in the April 10, 2019 email at 12:45 am which indicate that the late payments are not acceptable. This is not a situation where the Landlord allowed the Tenant to continuously pay late and took no steps to address the issue.

I acknowledge that the Landlord and Tenant agreed the Tenant would pay the outstanding rent and May rent by April 30, 2019. However, I find this agreement was made in the context of a discussion about the 10 Day Notice issued in March which the Tenant had disputed. I do not accept that the Landlord was forgiving the past late payments of rent.

Further, I do not accept that agreeing to a payment plan is the equivalent of waiving a right to issue a One Month Notice based on repeated late payment of rent. At the time the parties agreed on a payment plan, the Tenant had already paid rent late without permission or authority for four consecutive months. There was more than \$2,000.00 outstanding. The Landlord was entitled to this outstanding rent. Agreeing to allow the Tenant to pay this by April 30, 2019 is not the same as forgiving the fact that it was paid late. This is particularly so when the conversation was about the 10 Day Notice which would have ended the tenancy had the Tenant not paid the outstanding rent within five days of receiving the 10 Day Notice.

I also acknowledge that the Landlord stated in the April 13, 2019 email:

U need not worry about the notice...was frustrated 're the on'going. You have promised me till 2nd may to clear up all till 31st may. Notice will no longer be enforced.

However, this was about the 10 Day Notice, not about a One Month Notice or the Notice. Agreeing to cancel the 10 Day Notice is not the equivalent of agreeing to forgive past late rent payments or agreeing not to issue a One Month Notice based on repeated late payment of rent in the future.

The emails do not contain a clear and unambiguous waiver by the Landlord of his right to issue the Tenant a One Month Notice based on repeated late payment of rent. In the absence of a clear and unambiguous waiver, I am not satisfied the Landlord did waive his right in this regard.

I acknowledge the statement in Policy Guideline 38 about a landlord failing to act in a timely manner. I do not find that this applies here. The Tenant paid rent late for four consecutive months, April being the last month. I understand from the materials that the Landlord agreed to receiving the outstanding rent and May rent by May 02, 2019. The Landlord issued the Notice in July, two months later. I am not satisfied enough time passed that it could be said the Landlord failed to act in a timely manner.

I am satisfied the Landlord had grounds to issue the Notice pursuant to section 47(1)(b) of the *Act*. I dismiss the Tenant's dispute of the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*. Further, the Tenant did not take issue with the form or content.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have dismissed the dispute of the Notice and upheld the Notice. I have found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession. The Landlord asked that the Order of Possession be effective 15 days from the date of the decision. The Order of Possession is effective at 1:00 p.m. on September 20, 2019.

Given the above, the validity of the remaining notices to end tenancy is not relevant and I will not consider them.

Given the Tenant was not successful, I decline to award her reimbursement for the filing fee.

Conclusion

The dispute of the Notice and request for reimbursement for the filing fee are dismissed without leave to re-apply.

The validity of the remaining notices to end tenancy is not relevant.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on September 20, 2019. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 05, 2019

Residential Tenancy Branch