



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated November 12 2019, with an effective date of December 31, 2019 (the 1 Month Notice). Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on November 1, 2013. The current landlord took over this tenancy in September of 2016. Monthly rent is set at \$675.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$337.50. The tenant currently still resides in the suite.

The landlord served the notice to end tenancy dated November 12, 2019 providing the following grounds:

1. The tenant is repeatedly late paying rent.

The landlord provided the following submissions about why the 1 Month Notice was issued. The landlord testified that the tenant is repeatedly late in paying her rent. The landlord testified that at the end of September 2016 when he took over the tenancy, he had a discussion with the tenant to discuss rent payments. The landlord testified that the tenant was told that rent payments are due on the first of every month, and if she was unable to pay on time, that she was to inform the landlord ahead of time so he could make arrangements.

The landlord testified that the tenant would never return his emails or phone calls, and that she had only emailed him a couple of times. The landlord testified that there was no communication between the two parties, and that although the tenant provided a payment schedule ahead of time in 2017, she did not do so for 2018 and 2019. The landlord testified that she ignored him, and never let him know when payments would be late. The landlord included emails in his evidence that were sent to the tenant requesting that she pay on time, or send him the dates when the rent would be paid. The landlord testified that this made it difficult for him as he had to make arrangements financially. The landlord testified that he had also left notes on the tenant's door, as well as made phone calls. The landlord submits that the tenant was late 16 times in 38 months.

The tenant did not dispute that she had paid rent late, but testified that this was due to several reasons. The tenant testified that payments were often made on the first, but as it was the weekend, the payments do not post until the following Monday. The tenant testified that the landlord had only called her four times, and that she no longer had access to an email that she had previously used. The tenant testified that she was unaware that her late payments were an issue until the Notice To End Tenancy was issued to her.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that he has

cause to end the tenancy on the grounds provided on the 1 Month Notice, which in this case is for repeated late rent payments.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby 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...

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...

The tenant expressed concern that this tenancy should not end on the grounds of repeated late rent payments when it was never an issue until she received the 1 Month Notice on November 12, 2019.

I have considered the evidence submitted as well as the sworn testimony of both parties. Although I sympathize with the landlord and the stress and frustration he has faced since taking over the tenancy in 2016, I find that the tenant has established that late rent payments have been accepted for some time without proper written warning from the landlord.

Although I note the landlord has provided evidence of communication to the tenant that she make her payments on time, and although I note the tenancy agreement does state that payments are due on the first of every month, the landlord's own testimony is that the tenant was late at least 16 times in 38 months. The landlord confirmed that this was the first Notice to End Tenancy ever issued to the tenant. I find that the communication sent to the tenant requested that the tenant either make her payments on time, or that she provide the landlord with a schedule of when her payments would be made. The tenant did so for 2017, but failed to do so for 2018 and 2019 for disputed reasons. The tenant's testimony is that her email had changed, and that the landlord never gave her any warnings. The landlord testified in the hearing that there were communication issues between the parties.

I find that the landlord has failed to provide sufficient proof that the tenant had received sufficient, written warning that late rent payments are not acceptable. I find the continued acceptance of late rent payments raises the issue of implied waiver. Although rent may be payable on the first of the month, the acceptance or implied acceptance of late payments, may contribute to ambiguity. In this case the landlord had accepted 16 late rent payments in a duration of 38 months, and the 1 Month Notice to End Tenancy was not issued until November of 2019 even though the landlord submits that this was an ongoing problem since he had taken over in 2016.

A warning to a tenant must be unambiguous and clear. By accepting late rent payments on multiple occasions without properly informing the tenant in writing that these payments were considered late, and could possibly be considered a breach of the tenancy agreement and the

Act, the terms of the tenancy become ambiguous. I find that the landlord has accepted late rent payments for a long period of time, and has failed to clearly communicate to the tenant that this is not acceptable.

I find that the landlord has not sufficiently established that this tenancy should end on the grounds of repeated late rent payments. I allow the tenant's application to cancel the 1 Month Notice dated November 12, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

As the tenant was successful in their application, I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated November 12, 2019 is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: January 10, 2020

Residential Tenancy Branch