



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC

Introduction

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

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by family members and counsel.

The landlord confirmed receipt of the tenant's review hearing decision and evidence, though they submit that it was received outside of the timelines provided. As the landlord confirmed the materials were served and have had an opportunity to review, I find that there is no prejudice to the parties or a breach of the principles of natural justice to allow their inclusion, and find that the materials were sufficiently served pursuant to section 71 of the *Act*.

Issue(s) to be Decided

Should the decision and order of November 15, 2019 be upheld, varied or set aside?

Background and Evidence

The parties agree on the following facts. The monthly rent for this tenancy is currently \$1,384.00 payable on the first of each month.

The landlord testified that they issued a 1 Month Notice to End Tenancy for Cause on September 19, 2019 by registered mail. The landlord provided a valid Canada Post tracking receipt as evidence of service.

The landlord subsequently filed an application for dispute resolution on October 7, 2019 and served it by registered mail on the tenant with their evidence. The landlord submitted a valid Canada Post tracking receipt as evidence of service.

The tenant confirmed that they received notices of attempted delivery from Canada Post but, as they were uncertain what the contents of the registered mail may be, chose not to pick up the packages.

The landlord's 1 Month Notice cited the following two reasons for seeking an end to this tenancy for cause.

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord submitted evidence that monthly rent is paid through electronic fund transfers and that they have been paid after the first in 13 of the last 15 months. The landlord also gave evidence that the tenant has conducted themselves in an aggressive, disrespectful and hostile manner that has caused the landlord and their family members significant stress and concern.

The tenant submitted into evidence their record of fund transfers and said that the payments are always initiated on the 1st of each month. The tenant submits that the records indicate the payment times in Eastern Time but when the time difference is calculated the payments are initiated on the 1st.

The tenant disputes that they have conducted themselves in a manner that has caused significant interference or disturbance of others.

Analysis

In accordance with sections 88(c) and 89(2)(b) of the Act registered mail to the tenant's address is an acceptable method of service for a 1 Month Notice to End Tenancy, a notice of hearing, and evidentiary materials. Section 90 of the Act provides that materials sent by registered mail are deemed to have been served 5 days after mailing.

Residential Tenancy Policy Guideline 12 sets out that:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the

Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The tenant gave evidence that they chose not to pick up the registered mail as they were unaware of what the contents may be and that this was not the habitual method that they communicated with the landlord. I do not find these excuses to be a reasonable reason to refuse service of materials sent in accordance with the Act.

Therefore, in accordance with sections 88, 89 and 90 of the Act, I find that the tenant is deemed to have been served with the 1 Month Notice, the landlord's application and evidence.

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. I find that the tenant has failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the Act.

In addition to failing to dispute the notice, I have considered the reasons provided by the landlord to end the tenancy.

The landlord needs only demonstrate that one of the reasons identified in the 1 Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted evidence that the tenant has repeatedly paid rent during the past year of the tenancy.

Residential Tenancy Policy Guideline #38 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...

There is clear evidence that the written tenancy agreement requires the tenant to pay the full rent by the first of each month. While the tenant submits that they have consistently made payment by the date that it is due, I find their own evidence does not support their submission. Even accounting for the time change payments are initiated on August 2, 2019, May 2, 2019, and March 14, 2019, December 2, 2018, and November 2, 2018 after the first of the month local time.

I am satisfied with the evidence that there is a recurring pattern of late payment of rent during this tenancy and that there are grounds for the landlord to issue a 1 Month Notice to End Tenancy for Cause.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice.

Based on all of the above, I find it appropriate to affirm the decision and order of November 15, 2019.

Conclusion

The decision and order of November 15, 2019 are affirmed.

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 14, 2020

Residential Tenancy Branch