



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC FFT LRE OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended. The landlord attended with her son and agent RS (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Preliminary issue # 1

At the commencement of the hearing, I advised the parties that the Rule 2.3 of the Residential Tenancy Rules of Procedure require that multiple applications contained in a single application for dispute resolution must be related. In this case, I found that the primary applications deal with a notice to end the tenancy, and the balance of the tenant’s application is not related. Therefore, I dismissed the balance of the tenant’s

application with leave to reapply. I have made no findings of fact or law with respect to the merits of those matters.

Preliminary Issue #2

I informed the parties that in the event I dismissed the tenant's application to cancel the One Month Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) 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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the One Month Notice?

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed the tenancy began on February 5, 2016 and they entered into a new tenancy agreement effective January 1, 2017, a copy of which was submitted as evidence. Rent is \$750.00 monthly payable on the first of the month.

The parties agreed the tenant was late paying rent every month during 2019 by 3-5 days.

The tenant stated that the landlord attempted to negotiate a rent increase in September 2019 to increase the rent to \$1,000.00 monthly. The tenant declined to accept the proposed rent increase.

On November 7, 2019, the landlord issued the One Month Notice and served it upon the tenant, receipt of which the tenant acknowledged. The Notice stated the reason for the issuance was that the tenant was repeatedly late paying rent.

The tenant claimed that the parties agreed that because of her pay period, the tenant was permitted by the landlord to pay rent late.

The landlord disagreed and denied that the landlord consented to late payment. The landlord stated that the tenant paid on time in the early part of the tenancy in 2017.

During the hearing, the landlord RT said that she wanted to move back in to the apartment.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

In this case, there is dispute between the parties as to whether the tenant has an obligation to pay the rent on the first day of the month.

The landlord acknowledged that the tenant paid the rent late every month during 2019 without complaint by the landlord until November 2019.

I have considered the competing evidence of the parties. I find it compelling that the landlord did not demand payment of rent on the first of the month and accepted late rent every month in 2019.

In assessing the different version of events, I find the tenant's testimony of what took place to be the most likely, that is, that the parties had agreed the tenant could pay rent late.

I find that the landlord's failure to object to the late payment during most of 2019 leads to the common-sense conclusion that the parties agreed it was acceptable for the tenant to pay late. I accept the tenant's testimony that late payment was not an issue between the parties until the landlord issued the One Month Notice following an alleged denial by the tenant to agree to a substantial rent increase. I find that the landlord issued the Notice for other reasons, that is, that the landlord wanted to increase the rent, or, as stated by the landlord during the hearing, she wanted to move back in to the unit.

I find that the legal principle of estoppel applies to this application. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the landlord established a pattern of not requiring the tenant to pay on the first of the month. I find the tenant relied on this pattern and during 2019 did not pay rent on the first of the month.

I find the landlord is estopped from claiming that the tenant failed to pay rent on the first of the month; I also find the landlord does not have a sound basis for the issuance of a One Month Notice for the tenant being repeatedly late paying rent.

I therefore find the landlord has not met the burden of proof on a balance of probabilities that it was a term of the tenancy agreement that the tenant would pay rent on the first of the month, failure of which entitled the landlord to issue a One Month Notice.

I therefore, I grant the tenant's application to set aside the One Month Notice. I order that the tenancy continue until it is ended in accordance with the agreement, the Act and the regulations.

As the tenant's application is successful, I grant her reimbursement of the filing fee in the amount of \$100.00. Pursuant to section 72, I direct that the tenant may deduct this amount of \$100.00 from the rent due after this decision **on a one-time basis only**.

Conclusion

The tenant's application to cancel the One Month Notice is granted. The Notice is of no effect and the tenancy continues until ended pursuant to the terms of the agreement, *Act* and regulations.

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 03, 2020

Residential Tenancy Branch