



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAF EXCAVATING COMPANY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 09, 2020 (the "Application"). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 03, 2020 (the "10 Day Notice") and to dispute a One Month Notice to End Tenancy for Cause dated March 03, 2020 (the "One Month Notice").

The Tenant appeared at the hearing. T.G. and M.G. appeared as representatives for the Landlord. T.G. and M.G. confirmed the landlord is the company named as the landlord on the written tenancy agreement submitted. I amended the Application to name the company as the landlord and this is reflected in the style of cause.

I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. T.G. confirmed receipt of the hearing package and Tenant's evidence. T.G. said the Tenant's evidence was late; however, T.G. did not take issue with admission of the evidence and therefore I did not go into this further. The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted 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 10 Day Notice be cancelled?

2. Should the One Month Notice be cancelled?
3. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice or One Month Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2015 and is a month-to-month tenancy. Rent at the start of the tenancy was \$1,300.00 per month. Rent is due on the first day of each month.

The parties agreed the Tenant paid the outstanding rent on the 10 Day Notice. The 10 Day notice states the Tenant failed to pay \$1,368.38 in rent due March 01, 2020. The 10 Day Notice is dated March 03, 2020. The Tenant submitted evidence showing March rent was paid March 03, 2020. The Landlord's evidence shows the Tenant paid March rent March 03, 2020.

The parties agreed the One Month Notice was hand delivered to the Tenant March 03, 2020.

The One Month Notice is addressed to the Tenant and relates to the rental unit. It is signed and dated. It has an effective date of April 30, 2020. The grounds for the One Month Notice are that the Tenant is repeatedly late paying rent.

The Tenant did not raise an issue with the form or content of the One Month Notice when asked.

The Landlord submitted a rent ledger showing when rent payments have been made since 2015. It shows that the Tenant paid rent late as follows:

- September 2015
- November 2015
- January 2016
- February 2016
- March 2016
- April 2016
- July 2016
- August 2016

- December 2016
- July 2017
- September 2017
- October 2017
- November 2017
- April 2018
- September 2018
- October 2018
- May 2019
- September 2019
- March 2020

T.G. confirmed the rent ledger is accurate and the Tenant paid rent late as outlined above.

T.G. relied on sections 26 and 47 of the *Act* in relation to the requirement to pay rent when it is due under the tenancy agreement and being able to end a tenancy when rent is repeatedly paid late. T.G. also referred to Policy Guideline 38 and the requirement of three late rent payments.

In relation to the timing of late payments, M.G. submitted that it would be unfair not to end the tenancy on the basis that the late payments occurred over a number of years because they were trying to work with the Tenant.

The Tenant testified that the rent ledger is not accurate. He testified that he has only paid rent late as noted on the One Month Notice which is as follows:

- September 2015
- November 2015
- January 2016
- February 2016
- April 2016
- September 2018
- October 2018
- April 2018
- September 2019
- March 2020

The Tenant took the position that he paid rent on time other than as noted above. The Tenant had not submitted evidence to support this position. When asked about evidence, the Tenant indicated he did not have evidence because he had a different bank account previously or was paying cash. The Tenant testified that he had asked for receipts but T.G. and M.G. would not provide them.

The Tenant further testified as follows. He was having a rough time personally at the start of the tenancy but has improved with rent payments. He was not late paying rent at all in 2017. He had been laid off in 2018. More recently, he was on strike at work and then could not go back to work due to the pandemic.

In reply, T.G. testified that she did provide the Tenant with receipts for payments and that these are in the evidence package provided.

T.G. and M.G. sought an Order of Possession effective 30 days after service on the Tenant given the current pandemic.

Analysis

Based on the evidence noted above in relation to the 10 Day Notice, I am satisfied the 10 Day Notice was cancelled pursuant to section 46(4)(a) of the *Act* given the Tenant paid the outstanding rent on the same date the 10 Day Notice was issued.

The One Month Notice was issued under section 47 of the *Act*. The Tenant had 10 days from receipt of the One Month Notice to dispute it under section 47(4) of the *Act*.

There was no issue that the Tenant received the One Month Notice March 03, 2020. The Application was filed March 09, 2020, within time.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the grounds for the One Month Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 47(1)(b) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(b) the tenant is repeatedly late paying rent;

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.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. 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

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

I am satisfied the rent ledger submitted is accurate. The Tenant took the position that it is not and testified that he only paid rent late as shown on the One Month Notice. I do not accept this. The Landlord submitted evidence showing otherwise. For example, the Landlord submitted receipts showing the Tenant paid rent late for March of 2016, August of 2016, December of 2016, July of 2017 and September of 2017. This evidence supports that the rent ledger is correct and that the One Month Notice does not list all late rent payments as claimed by the Tenant.

I do not find the Tenant’s testimony that the rent ledger is not accurate reliable or credible given the evidence submitted that contradicts his testimony. The Tenant could not point to documentary evidence to support his testimony that the rent ledger is not accurate. I do not accept this testimony.

Based on the rent ledger, I am satisfied of the following. The Tenant paid rent late twice in 2015, seven times in 2016, four times in 2017, three times in 2018, twice in 2019 and once in 2020 at the time the One Month Notice was issued. The Tenant has paid rent late 19 times over the course of the tenancy which has been less than five years.

I am satisfied there is a pattern of the Tenant paying rent late. I am satisfied the Tenant is repeatedly late paying rent. I do not find the late payments so far apart that the Tenant cannot be said to be repeatedly late paying rent. I am satisfied the Tenant paid

rent late three times within the year leading up to the One Month Notice being issued which alone is grounds to end this tenancy under section 47(1)(b) of the *Act*.

I am satisfied the Landlord acted in a timely manner in issuing the One Month Notice as it was issued March 03, 2020, immediately after March rent was paid late.

I am not satisfied the reasons for the late rent payments as provided by the Tenant are sufficient to justify cancelling the One Month Notice. They are personal reasons that do not relieve the Tenant of his obligation to pay rent on time under the tenancy agreement. They are not reasons that are equivalent to a bank error. I acknowledge that the Tenant raised the issue of the pandemic in relation to the March late payment. However, this was the nineteenth time the Tenant paid rent late and therefore I am not satisfied the One Month Notice should be cancelled on this basis alone.

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 One Month Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

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

I have dismissed the dispute of the One Month Notice and upheld the One Month Notice. I have found the One Month 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 Order of Possession is effective 30 days after service on the Tenant.

Conclusion

The 10 Day Notice is cancelled.

The One Month Notice is upheld. The Landlord is issued an Order of Possession effective 30 days after service on the Tenant. 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 **SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.**

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: April 22, 2020

Residential Tenancy Branch