



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant did not attend or submit any documentary evidence. The named landlord, A.S. and the named landlord (company) agent, M.C. attended the hearing via conference call and provided undisputed affirmed testimony.

The landlords stated that they were served with the tenant's notice of hearing package and were aware of the listed issues.

After waiting 12 minutes past the start of the scheduled hearing time the tenant's application for the landlord to comply was dismissed without leave to reapply. The tenant's request to cancel the notice to end tenancy for cause was dismissed, however, the landlord made a request for an order of possession under section 55 of the Act.

The landlord provided undisputed testimony that on February 5, 2020, the landlord served the tenant with the 1 Month Notice dated February 5, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of March 13, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent.

No details of cause were provided on the notice.

The landlord provided undisputed testimony that the tenant was given copies of two 10 Day Notice(s) for Unpaid Rent, one on November 22, 2019 and the second on December 12, 2019. The landlord clarified that the reason for repeatedly late payments of rent was based on these two incidents.

Analysis and Conclusion

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Residential Tenancy Branch Policy Guideline #38, Repeatedly late payments of rent states in part,

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide that 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.

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.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

I accept the undisputed testimony of the landlord and find that the landlord's notice is based upon two occurrences of unpaid rent as per the submitted 10 Day Notice(s) dated November 22, 2019 and December 12, 2019. Pursuant to Residential Tenancy Branch Policy Guideline #38, Repeatedly late payments of rent required a minimum number of three late payments to justify a notice under these provisions. On this basis, the landlord has failed to justify the reason for cause listed on the notice. The landlord's

request for an order of possession is denied. The 1 month notice dated February 5, 2020 is set aside and cancelled. The tenancy shall continue.

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: April 24, 2020

Residential Tenancy Branch