



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on May 12, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application, and evidence. The Tenant confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties confirmed that monthly rent was initially set at \$1,600.00 per month and was due on the first of the month. A copy of the tenancy agreement was provided into evidence. However, both parties agreed at the hearing that monthly rent is only \$1,450.00, because the Tenant no longer has laundry access. As such, the parties agree that monthly rent is now \$1,450.00, and is due on the first of the month (has been this way since October 2019).

The Tenant received the Notice on March 4, 2020. A copy of the Notice was provided into evidence. The Landlord selected the ground that the Tenant is repeatedly late paying rent.

When asked to explain further, the Landlord stated that she did not receive the Tenant's February 2020 rent payment until February 2, 2020. The Tenant explained that her cheque did not arrive in time, so she had to send an e-transfer on February 2, 2020. The Tenant does not dispute that February 2020 rent was late.

The Landlord also stated that the Tenant failed to pay March rent. However, the Tenant cited a previous decision, which gave her the permission to withhold \$1,500.00 from future rent payments due to a claim for compensation. The Landlord did not present any other occurrences where the Tenant was late with rent.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord issued the Notice for one reason:

Tenant is repeatedly late paying rent.

Both parties agree that rent is due on the first of the month. I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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.

When a Landlord issues a Notice due to repeated late payment of rent, the Tenant must have paid late a minimum of 3 times in order for the Notice to be valid. In this case, at the time the Landlord issued the Notice, on March 4, 2020, the evidence shows the Tenant was only late once, in February 2020. March 2020 rent was not late, since the Tenant was granted permission to withhold the amount she was awarded (\$1,500.00 from a hearing in February 2020) from a future rent payment. In any event, the Landlord has failed to demonstrate the Tenant was late a minimum of 3 times, at the time she issued the Notice on March 4, 2020.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, I cancel the Notice.

The Tenant's application is successful. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice from March 4, 2020, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: May 12, 2020

Residential Tenancy Branch