



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 03, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated June 25, 2020 (the "Notice").

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Agent had been named as the landlord on the Application. The Agent confirmed the owner of the rental unit should be named as the landlord and this is reflected in the style of cause. The Agent works for the property management company named on the Notice.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant's evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and 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 Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. The tenancy for this rental unit started October 01, 2018 and was for a fixed term until 2019 then became a month-to-month tenancy. Rent is \$1,600.00 per month due on the first day of each month.

The Tenant testified that he lived in the lower unit of the house starting in June of 2017 and moved up to the rental unit October 01, 2018.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of July 31, 2020. The reason for the Notice is that the Tenant is repeatedly late paying rent. The Notice states the Tenant paid rent late May, June, August, September and December of 2019 as well as January, February and March of 2020. The Tenant did not take issue with the form or content of the Notice.

The Agent confirmed the Notice was posted to the door of the rental unit June 25, 2020. The Tenant acknowledged receiving the Notice June 26, 2020, posted to the door of the rental unit.

The Agent confirmed what is stated on the Notice and that the Tenant paid rent late in May, June, August, September and December of 2019 as well as January, February and March of 2020. She testified that the Landlord intended to issue the Notice in March; however, the state of emergency was declared and so this was put on hold. The Agent testified that she had to issue the Tenant 10 Day Notices every month to get rent. The Agent sought an Order of Possession as soon as possible.

The Tenant agreed he paid rent late in May, June, August, September and December of 2019 as well as January, February and March of 2020. The Tenant testified as follows. He has been a good tenant for three years. He has been going through difficult times regarding his daughter, business and health. He takes good care of the rental unit.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the "Act") states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy

agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy if a tenant repeatedly pays rent late. A tenant may dispute a notice to end tenancy issued under section 47 of the *Act* within 10 days of receiving the notice pursuant to section 47(4) of the *Act*.

Based on the testimony of both parties, I accept that the Tenant received the Notice June 26, 2020, posted to the door of the rental unit. The Notice was served in accordance with section 88(g) of the *Act*. The Tenant had 10 days to file the Application. The Tenant filed the Application July 03, 2020, within the time limit.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the Notice.

Policy Guideline 38 addresses 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.

The parties agreed the Tenant paid rent late in May, June, August, September and December of 2019 as well as January, February and March of 2020. This is eight times within a year. I find this is repeated late payment of rent given the number of times rent was paid late over only one year and given rent was paid late consecutively for the most part.

I do not find that the Landlord failed to act after the March late payment as the Landlord was not permitted to serve the Notice from March 30, 2020 to June 24, 2020 pursuant to the Emergency Orders #M089 and #M195.

I do not find the reasons provided by the Tenant for the late payments to be exceptional circumstances as they are not the equivalent of a bank error. Tenants are required to pay rent pursuant to their tenancy agreement and their personal circumstances or financial situation do not change this obligation.

I am satisfied the Tenant has repeatedly paid rent late. Therefore, I find the Landlord had grounds to issue the Notice.

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

Given the above, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

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

I have dismissed the dispute of the Notice and upheld the Notice. I have found that the 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 Agent asked that the Order of Possession be effective as soon as possible and therefore it will be effective two days after it is served on the Tenant.

Conclusion

The Notice is upheld and the dispute is dismissed without leave to re-apply. The Landlord is issued an Order of Possession effective two 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.

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: July 31, 2020

Residential Tenancy Branch