



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 10, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 30, 2020 (the "One Month Notice");
- an order restricting the Landlord's right to enter the rental unit; and
- an order granting the return of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the One Month Notice to End Tenancy for Cause. As such, the Tenant request for an order restricting the Landlord's right to enter the rental unit is dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2018. The Tenant currently pays rent in the amount of \$800.00 each month to the Landlords which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlords continue to hold. The parties agreed that the tenancy is ongoing.

The Landlords testified that the Tenants has been repeatedly late paying rent in the following months;

September, December 2018
March, July, and August 2019
January, March, and July 2020

The Landlords stated that they subsequently served the Tenant in person on July 31, 2020 with a One Month Notice dated July 30, 2020 with an effective vacancy date of

August 31, 2020. The Landlords' reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

The Tenant confirmed having received the One Month Notice served to her in person on July 31, 2020. The Tenant agreed that the rent had been paid late on the above-mentioned months; however, the Tenant stated that the Landlords have not informed her that this was a problem. Furthermore, the Tenant stated that she had a conversation with the Landlords during which the Landlords indicated to the Tenant that they were wanting to list the rental unit for sale and that it would be easier to sell the unit if there was no tenancy. The Landlords denied this conversation took place.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, *a landlord may end a tenancy by giving notice to end the tenancy for cause.*

The Residential Tenancy Policy Guideline 38 states 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.*

Section 26 of the Act explains that *the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act.*

According to the Residential Tenancy Branch Policy Guideline 52;

The C19 Tenancy Regulation provides that a landlord must not give a tenant a One Month Notice to End Tenancy for Cause under section 47 of the RTA in respect of a reason that relates to affected rent being unpaid, including one or more of the following reasons:

One or more payments of the affected rent are late. For example, if the tenancy agreement stipulates that rent is due on the first of each month, and the tenant paid their rent late for the months of April, May, June and July 2020, the landlord cannot end the tenancy for late payment of rent during those months. A One Month Notice to End Tenancy that is given for one of these reasons or otherwise is related to affected rent being unpaid is of no effect. An Order of Possession will not be granted to a landlord in these circumstances.

In this case, the parties agreed the Tenant is required to pay rent in the amount of \$800.00 to the Landlords on the first day of each month. I accept that the parties agreed that the Tenant has paid rent late in September, December 2018; March, July, August 2019; and January, March, July 2020.

The Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated on July 30, 2020 in person on July 31, 2020 with an effective date of August 31, 2020. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, I find that the late payments of rent made by the Tenant to the Landlords in September, December 2018; March, July, and August 2019 are too far apart from the most recent late payments of rent made on January, March, and July 2020. As such, I find, in the circumstances, these dates are not to be considered when determining if the Tenant has made repeated late payments of rent.

I will now turn my mind to consider if the Tenant paying rent late in January, March, and July 2020 gives the Landlords sufficient cause to end the tenancy for repeated late payments of rent.

I find that the late payment of rent made by the Tenant to the Landlords in July 2020 constitutes “affected rent” and therefore cannot be considered towards the repeated late payments. I find that the Tenant has paid rent late on two occasions which can be considered towards the repeated late payments of rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

In light of the above, I find that the Landlords have provided insufficient evidence to demonstrate that this tenancy should end on the basis that the Tenant has been repeatedly late paying rent to the Landlords. Regardless, the Tenant is cautioned that any further late payments of rent could give the Landlords sufficient cause to end the tenancy.

The Tenant's application is successful. The One Month Notice issued by the Landlord dated July 30, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

As the Tenant was successful with her Application, I find that she is entitled to the return of the \$100.00 filing fee, which may be deducted from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated July 30, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment which represents the return of the filing fee.

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: September 25, 2020

Residential Tenancy Branch