



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy received August 22, 2020. The Notice's sole ground is that the tenant has been repeatedly late paying rent. Such a ground, if proved, is a lawful ground for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "RTA"). The tenant also applies to dispute a rent increase and for an order that the landlord comply with the RTA or the tenancy agreement regarding the collection of money for utilities.

The parties were informed that the tenants' claim to cancel the Notice has caused this matter to be scheduled quickly and to a hearing spot of limited time. The tenants other two claims are unrelated to the question of the validity of the Notice. Rule 2.3 of the Rules of Procedure provides that claims made in the application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. At hearing I exercised my discretion and dismissed the tenant's claims but for her challenge to the Notice, with leave for her to re-apply. It should be noted that the tenant's claims that have been dismissed, if successful, would normally lead to a monetary award in the nature of a rebate of money paid for utilities and perhaps rent. The tenant has not made a claim for a monetary compensation in this application. The dismissal of her claims here, with leave to re-apply, will permit her to consider bringing all claims related to the alleged miscalculations together in one application.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant been repeatedly late paying rent?

Background and Evidence

The rental unit is a three-bedroom part of a fourplex building owned or operated by the landlord. This tenancy started in April 2012. The tenant says the current monthly rent is \$925.58. The landlord says its \$987.49. There is a dispute about rent increases the landlord has given the tenant. They agree the landlord holds a \$435.39 security deposit of \$435.39.

The tenant was originally a subtenant of a previous tenant who had a written tenancy agreement with the landlord. The tenant took the place of that previous tenant. There is a dispute about whether or not the parties signed a new tenancy agreement.

The landlord testifies that there is a record of years of late payment. He produces a ledger summary that shows the tenant had fallen far behind in the rent a number of years ago and, through regular monthly payments, sometimes hundreds of dollars in excess of the rent, sometimes over a thousand dollars in excess of the rent, was bringing up the arrears. If the ledger is correct it shows the tenant missed payments very occasionally in a month. The ledger stops at December 2019. It does not show when the payments were made in any particular month.

The landlord says the tenant has not paid August or September 2020 rent. He says she "never" paid on the first of the month but only when she had money and it's been like that for years. He says that in his emails to the tenant he indicated that if the problem (the arrears problem and late payment problem) was not solved he would "go to other options." The emails were not produced.

The tenant says that her rent payments used to be at the end of the month and were late. However, she says, she has caught up the arrears and has been paying early.

She produces an email to the landlord dated March 15, 2019 reporting that she could now pay \$1500.00 a month for rent and arrears reduction. The landlord responded that it sounded encouraging.

Analysis

If the tenant has not paid August or September rent that is concerning. However, the Notice is dated August 20, 2020 and so the fact of the September rent is not relevant to the circumstances as they existed when the Notice was issued. It is also relevant to note that the parties have fallen into a dispute about a possible overpayment of utilities by the tenant and an allegation the rent increases imposed by the landlord over the years might be invalid. Thus, the landlord, who has obviously gone out of his way for years to accommodate and help the tenant through her difficult monetary times, is being faced with the possibility of having to account to the tenant for money. Such a situation is not conducive to a friendly relationship.

The Notice itself is the standard one month Notice to End Tenancy published by the Residential Tenancy Branch. It requires the landlord to check off the grounds for ending the tenancy and then in the "Details of Cause" box provided. It says:

Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

The details provided by the landlord refer to missing rent payments from September 2013 and that he gave her a ten-day Notice to End Tenancy for non-payment of rent in February 2014.

I find these details to be fatally lacking. Late rent five or six years ago is a long expired complaint. As noted in Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent," if the late payments are far apart they may not qualify as "repeated" late payment.

As well, the lack of detail effective prevents the tenant from determining which month's rent is being alleged to have been late and thus permitting her to present evidence of timely payment for that particular month.

In addition, the evidence shows that the landlord has acquiesced in the late payments and was "working with the tenant" particularly through the March to August 2020 Covid19 difficulties. There is no clear evidence that he made it plain to the tenant that henceforth her rent must be paid on time "or else." He is thus estopped from relying on repeated late payment of rent until he did so.

It should go without saying that the landlord, by giving this Notice, has made it clear to the tenant that he will no longer acquiesce in receiving rent late. The parties should conduct themselves accordingly.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is allowed. The Notice is cancelled. The remainder of the tenant's claims are dismissed with leave to re-apply.

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: October 20, 2020

Residential Tenancy Branch