



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated August 14, 2020 (1 Month Notice), and to recover the cost of the filing fee.

The tenants, counsel for the tenants, AC (counsel), the landlord and the spouse of the landlord (spouse) attended the teleconference hearing. The parties provided their testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

Both parties confirmed that they had the opportunity to review the documentary evidence from the other party prior to the hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

Both parties confirmed their respective emails at the outset of the hearing. The parties were advised that the decision would be emailed to both parties.

In addition, a second undated 1 Month Notice with an effective vacancy date of October 31, 2020 was reviewed and was dismissed at the outset of the hearing, as the notice was incomplete and did not comply with section 52 of the Act. Therefore, the undated notice is of no force or effect. Given this, I will address the 1 Month Notice dated August 14, 2020 below.

Issues to be Decided

- Should the 1 Month Notice be cancelled under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a handwritten tenancy agreement was submitted in evidence. The tenancy began on September 1, 2017. The parties agree that the 1 Month Notice was dated August 14, 2020. The tenant affirmed that she received the 1 Month Notice on July 31, 2019. The 1 Month Notice has an effective vacancy date of August 31, 2019. The tenant filed their application to cancel the 1 Month Notice on August 1, 2019.

On the 1 Month Notice, the landlord has alleged one cause, namely:

1. The tenant is repeatedly late paying rent.

The landlord wrote in the Details of Cause portion of the 1 Month Notice the following in part:

TENANT IS REPEATED LATE PAYING RENT (texted request to hold cheque)
January 1, 2020 rent – paid January 6, 2020
February 1, 2020 rent – paid February 5, 2020
March 1, 2020 rent – paid March 6, 2020....

The tenants' counsel submits that the tenancy agreement fails to specify when rent is due and therefore, rent can not be late if it is paid during the month it is due. The tenancy agreement was reviewed, and the date in which rent is due is missing from the tenancy agreement.

Tenants' counsel submits that when a tenancy agreement is ambiguous, it must favour the tenants based on the Contra Proferentem Rule. The tenants filed their application to dispute the 1 Month Notice on August 17, 2020.

The landlord read the following writing on bottom portion of tenancy agreement, some of which was cut off in the picture, which reads:

Tenant to provide post-dated cheques for rent

Damage deposit of \$1,2[cut off]
due September 1 w[cut off]
balance of September [cut off]
rent.

The landlord's position is that as September 1 was listed for the damage deposit, that rent would be due on that date also.

Analysis

Based on the above the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of September 30, 2020, which as passed. The tenants disputed the 1 Month Notice on August 17, 2020, which I find is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord alleges one cause noted above; however, I find the landlord failed to indicate the specific date in which rent is due. In addition, I disagree with the landlord that rent would be the first day of each month based on the wording related to the security deposit as that is speculative and is ambiguous as the date in which rent is due is missing from the tenancy agreement.

In these circumstances I find that the tenancy agreement is ambiguous in terms of the date rent is due as it is missing the specific day of the month. I am therefore guided by *Derby Holdings Ltd. V. Walcorp Investments Ltd. 1986, 47 Sask R. 70* and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift, (1982) 36 A.R. 193*, in which the Court held that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant.

Based on the above, I find that the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid. Therefore, I cancel the 1 Month Notice dated August 14, 2020, as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I find that the tenants have not paid rent late as long as rent is paid before the end of the month in which it is due as there is insufficient evidence before me to support that rent was due on the first day of each month given that the landlord neglected to include the rent due date in the tenancy agreement and pursuant to section 62(3) of the Act.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenants' application was successful, I grant the tenants the recovery of the **\$100.00** filing fee. **I authorize** the tenants a one-time rent reduction for a future month of rent in the amount of **\$100.00**, in full satisfaction of the recovery of the cost of the filing fee, pursuant to sections 67 and 72 of the Act.

Conclusion

The tenants' application is successful. The 1 Month Notice issued by the landlord dated August 14, 2020 is cancelled and is of no force or effect.

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

The tenants have been granted a one-time rent reduction of \$100.00 for the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2020

Residential Tenancy Branch