



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

One of the tenants attended the hearing with an Advocate, and represented the other tenant. An agent for the landlord also attended. The parties each gave affirmed testimony and the landlord's agent also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, I indicated to the parties that the Tenants' Application contained the name of the landlord twice, and the parties agreed that the style of cause should be amended. The frontal page of this Decision reflects that amendment.

Issues to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reason for issuing it?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 was originally

payable on the 1st day of each month which has been raised and is now \$933.00 per month, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided for this hearing by the tenants, which is missing a page.

The landlord's agent further testified that on August 31, 2020 he posted a One Month Notice to End Tenancy for Cause to the door of the rental unit, and the tenants have provided a copy. It is dated August 31, 2020 and contains an effective date of vacancy of September 30, 2020. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The landlord has provided a copy of a tenant ledger, and the landlord's agent testified that since the end of July, 2019 he has been the agent for the landlord and rent has never been paid on time. A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given to the tenants in November, 2019 for \$456.50 that was due on November 1, 2019. Since then, the ledger shows when rent was paid. The tenants were late with rent every month. The landlord's agent spoke with the tenants every month verbally face-to-face and each time the tenant acknowledged that rent was supposed to be paid on the 1st day of each month.

Rent was increased in February, 2020, and the landlord's agent issues receipts for all payments made in cash. However, the landlord's agent has a compromised immune system and due to COVID-19 he did not attend at the rental unit or write the receipts right away. The landlord's agent had surgery at the end of February and left receipts with another manager and some receipts were not fully dated, but the tenant ledger has the correct dates, and the landlord's agent passed to the tenants 3 months of receipts at once. Rent was paid on time for this month, but never prior.

The landlord's witness testified that he is the owner of the rental complex and was told by the previous property manager in May 2019 that he wanted to evict the tenants at that time due to being late with rent for the last 4 or 5 years. The witness was told that the tenants make promises, but don't keep the promises about paying rent. When the new agent of the landlord took over, the witness told him to not let that happen. He used to make 2 or 3 trips to get the rent. The tenants were late in 2019, then in January, 2020 rent was late again. Then COVID-19 hit, and that's why the tenants are still in the rental unit.

The tenant testified that there have been difficulties paying rent on time in the past, but the tenants did not receive any warning letters from the landlord.

The tenant further testified that when the tenants first moved in the hydro was about \$100.00 or \$150.00 per month, but has gone up, so the tenants broke up the rental payments into 2 payments so they could still pay the hydro. There is a gap at the door that lets in the cold and a window is cracked. The tenant was afraid to ask for repairs, for fear of getting a notice to end the tenancy, which is what has happened.

The tenant's husband was paid every 2 weeks so rent was paid every 2 weeks and the property manager at the time was okay with it, and the tenant always called him ahead of time. Rent for this month was paid in full and on time. Going forward, the tenant will make payments by e-transfer and would prefer that the landlord give paper receipts for the tenants' records. The tenants have learned from their mistakes and if the windows were fixed, thy hydro wouldn't be as high, and rent could be paid on time, but paydays don't land on the 1st of the month.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

It is important to pay attention to all of the context in this situation. The tenants had a cordial relationship with the previous property manager. There has been no serious misconduct that has affected the landlord company. Through the landlord's conduct and communications, the payments made was an acceptable method and the status quo. The landlord gave a notice to end the tenancy for unpaid rent, but no warning letter was given. Further, the landlord increased the rent in February, 2020 indicating a willingness to continue the tenancy.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The contract of the parties is legally binding and that rent is due on the 1st of each month. If not paid, the landlord has grounds for termination. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities given in November, 2019 was given because the tenants had not spoken with the landlord. The landlord's agent does not twist tenants' arms to pay rent on time. The landlord still has expenses, and in this case, late rent seems habitual.

Analysis

The question of whether late or partial payments of rent was the status quo or habitual is not contemplated in the *Act* or the tenancy agreement.

The *Residential Tenancy Act* specifies that a landlord may end a tenancy for repeated late rent. Further, 3 late payments of rent are the minimum required to end a tenancy for repeated late rent. In this case, there is no doubt that rent has been late on more than 3 occasions.

The tenants' Advocate indicated that no warning was given to the tenants, but only a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the landlord had attempted to end the tenancy for breach of a material term of the tenancy, a warning letter might be necessary, but not for repeated late rent; the tenants know when rent is due.

I have reviewed the tenancy agreement and the tenant ledger. Although I do not find it lawful to charge \$35.00 for late rent, I do not accept that had any bearing on whether or not rent was late.

I refer to Residential Tenancy Policy Guideline 52 which deals with notices to end a tenancy during the COVID-19 Pandemic. It specifies that a landlord must not give a tenant a One Month Notice to End Tenancy for Cause for a reason that relates to affected rent. "Affected rent" means rent that becomes due between March 18, 2020 and August 17, 2020. I have also reviewed the tenant ledger provided by the landlord, and although some of the late payments have fallen between March 18 and August 17, 2020, rent was also late for January, 2020, being paid on January 24; and was paid in installments for February, 2020. On March 9, 2020 the tenant caught up on rental arrears and paid March rent in full. September's rent was also late, being paid on the 4th of the month. That's more than 3 months in this calendar year, and I find that the landlord has established that the tenants have been repeatedly late paying rent. The tenant's application is dismissed.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause, which is an older version, however I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord.

The *Act* also specifies that documents served by posting to a door or other conspicuous place are deemed to have been served 3 days later, and that a landlord who gives a notice to end a tenancy must give it before the date rent is payable. In this case, the landlord testified that the Notice was served by posting it to the door of the rental unit on August 31, 2020, which is deemed to have been served on September 3, 2020. Incorrect effective dates contained in such a Notice are changed to the nearest date that complies with the law. Since rent is payable on the 1st of the month, the effective date of vacancy is changed to the end of the month following service, which is October 31, 2020.

Since the tenant has not been successful, I dismiss the tenant's application for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on October 31, 2020.

This order is final and binding and may be enforced.

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 26, 2020

Residential Tenancy Branch