



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNRL -S, MNDCL -S, FFL

Introduction

This hearing was set to deal with cross applications. The tenant applied to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice") and for orders to suspend or set conditions on the landlord's right to enter the rental unit. The landlord applied for a Monetary Order for unpaid rent and utilities; and, authorization to retain the security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents upon each other.

The tenant testified that he could not recall exactly how he served the landlord with his Application for Dispute Resolution but that he believed it was done by email. The landlord responded that the tenant sent her a text message indicating he was going to dispute the 1 Month Notice. The landlord testified that she received an email notification from the Residential Tenancy Branch ("the Branch") so she called the Branch and the Branch sent a copy of the Tenant's Notice of Dispute Resolution Proceeding and Application for Dispute Resolution to her which enabled her to upload evidence under the tenant's file number. Although the landlord was not properly served, she did receive the tenant's Notice of Dispute Resolution Proceeding and Application for Dispute Resolution; the landlord took action to respond to it by providing evidence; and, the landlord did not request an Order of Possession under her own Application for Dispute Resolution because the tenant had already filed to dispute the 1 Month Notice. In these circumstances, I found it reasonable and appropriate to deem the landlord sufficiently served pursuant to the authority and discretion afforded me under section 71 of the Act.

The landlord sent her Application for Dispute Resolution to the tenant via registered mail. The tenant confirmed receipt of the landlord's proceeding package.

I noted the landlord had not requested an Order of Possession for cause. The landlord responded that she understood she could not make such a request since the tenant had filed to cancel the 1 Month Notice. While that is incorrect, I may issue an Order of Possession to a landlord under a tenant's Application for Dispute Resolution pursuant to section 55(1) of the Act. Having deemed the landlord sufficiently served with the tenant's Application for Dispute Resolution, I proceeded to consider the landlord's entitlement to an Order of Possession under the tenant's Application for Dispute Resolution and section 55(1) of the Act.

I noted that the tenant did not provide a copy of the 1 Month Notice as is required under Rule 2.5 of the Rules of Procedure, and the landlord provided a photograph of page 1 of the 1 Month Notice only. I asked the tenant whether he had a copy of the 1 Month Notice before him and he said he did not. The landlord had a copy of the 1 Month Notice before her and I asked her to read key sections into evidence and, after she did, I confirmed with the tenant that it was a fair representation of the 1 Month Notice he received from the landlord. I ordered the landlord to provide me with a copy of all pages of the 1 Month Notice with instruction that this decision was conditional upon receiving a copy of all pages and the 1 Month Notice being valid and enforceable. The landlord uploaded a copy of all three pages of the 1 Month Notice shortly after the teleconference call ended and I have made this decision upon reviewing the 1 Month Notice provided by the landlord.

During the hearing, I did not hear any submissions that would warrant an order to suspend or set conditions on the landlord's right to enter the rental unit and I did not consider the tenant's request for such further.

Finally, the tenant included the name of his daughter as a co-tenant in filing his Application for Dispute Resolution; however, upon review of the tenancy agreement and the 1 Month Notice, I am unsatisfied the tenant's daughter has standing as a tenant and I have amended the style of cause to remove the name of the tenant's daughter.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

3. Is the landlord entitled to a Monetary Order for unpaid rent and utilities, and if so, the amount?

Background and Evidence

The tenancy started on September 1, 2014 and the tenant is required to pay rent of \$725.00 on the first day of every month. The tenant is also required to pay the landlord for 100% of the hydro bill for the property. The landlord did not collect a security deposit or pet damage deposit from the tenant.

On September 2, 2020 the landlord issued the subject One Month Notice to End Tenancy for Cause with a stated effective date of October 2, 2020 ("1 Month Notice"). On the second page of the 1 Month Notice, the stated reason for ending the tenancy is "Tenant is repeatedly late paying rent". On the third page of the 1 Month Notice, the Details of Cause section is completed and the landlord described the tenant's late payment of rent for the months of October 2019, November 2019, January 2020, February 2020, March 2020, and September 2020. The landlord went on to state in the Details of Cause that when the tenant was late paying rent for March 2020 the parties had a conversation whereby the parties agreed the tenant would pay his rent on time or his tenancy would be at risk.

The landlord submitted that the tenant did not pay all of the rent for June 2020, July 2020 and August 2020 but the 1 Month Notice was not issued until after September 2020 rent was not paid on time due to the restrictions put in place because of the COVID-19 pandemic.

The tenant filed to dispute the 1 Month Notice indicating he understood he had until September 7, 2020, which was his payday, to pay the rent. During the hearing, the tenant did not make this same submission. Rather, the tenant stated he made a mistake in not paying the rent for September 2020 on time. The tenant indicated he really does not know of a basis for cancelling the 1 Month Notice and he stated he was looking for more time to vacate the rental unit as one month was not enough. The tenant also acknowledged that he had not paid all of his rent for the months of June 2020 onwards but explained he is battling cancer and his income and his focus is going to other things.

During the hearing, the tenant requested he be permitted occupancy until at least November 30, 2020. The landlord was agreeable to giving the tenant occupancy until November 30, 2020.

During the hearing, the parties were in agreement that the tenant has failed to pay rent and utilities in the following amounts:

<u>Month</u>	<u>Unpaid Rent</u>	<u>Unpaid Utilities</u>
June 2020	\$200.00	Waived by landlord
July 2020	725.00	Waived by landlord
August 2020	725.00	Waived by landlord
September 2020	725.00	Waived by landlord
October 2020	725.00	\$76.00
November 2020	<u>725.00</u>	<u>Undetermined as of yet</u>
Totals	\$3825.00	\$76.00

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

Under section 47 of the Act, a landlord may end a tenancy where the tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline 38: *Repeated Late Payment of Rent* provides, in part: *Three late payments are the minimum number sufficient to justify a notice under these provisions.*

The COVID-19 (*Residential Tenancy Act and Manufactured Home Park Tenancy Act*) (No. 2) Regulation ("C19 Tenancy Regulation"), was made under sections 10.1 and 10.2 of the *Emergency Program Act* on August 14, 2020. The C19 Tenancy Regulation prohibits a landlord from considering late payment of rent for the affected period of March 18, 2020 through August 17, 2020 as late payments for purposes of issuing a 1 Month Notice.

In this case, the landlord has not counted the late payments of rent for the months of June 2020, July 2020 and August 2020 in issuing the 1 Month Notice. The landlord pointed to late payment of rent that was due on October 1, 2019, November 1, 2019, January 1, 2020, February 1, 2020, March 1, 2020 and September 1, 2020 as being late in issuing the 1 Month Notice and these payments fall outside of the affected period described above. As such, failure to pay rent for these months, on time, is a basis for considering the payment late and since there are at least three late months, I find there

was a basis to conclude the tenant is repeatedly late paying rent and a basis for ending the tenancy for cause.

The 1 Month Notice is in the approved form and is duly completed; however, the stated effective date is incorrect and should have read October 31, 2020. An incorrect effective date does not invalidate a notice to end tenancy. Rather, the effective date automatically changes to comply with the Act under section 53 of the Act.

In light of the above, I uphold the 1 Month Notice and I find the tenancy ended on October 31, 2020. I dismiss the tenant's application to cancel the notice. I find the landlord is entitled to an Order of Possession under section 55(1) of the Act.

Given the landlord's willingness to give the tenant occupancy until November 30, 2020, I provide the landlord with an Order of Possession that is effective at 1:00 p.m. on November 30, 2020.

With respect to the landlord's monetary claim, a landlord is entitled to recover all of the unpaid rent and utilities if the tenancy comes to an end and the unpaid rent and utilities from the affected period of March 18, 2020 through August 17, 2020 is no longer subject to a repayment plan. Since the tenancy has ended effective October 31, 2020, I find the landlord entitled to recover unpaid rent and utilities for the months up to and including October 2020. I further award the landlord loss of rent for November 2020 since the tenant continues to occupy the rental unit and may continue to occupy the rental unit until November 30, 2020. Therefore, the landlord is awarded unpaid and/or loss of rent and utilities in the sum of \$3901.00.

I also award the landlord recovery of the \$100.00 filing fee paid by the landlord.

In keeping with all of the above, I provide the landlord with a Monetary order in the total sum of \$4001.00 [\$3825.00 for rent + \$76.00 for utilities + \$100.00 for filing fee] to serve and enforce upon the tenant.

Conclusion

The tenant's Application for Dispute Resolution is dismissed and the landlord is provided an Order of Possession effective at 1:00 p.m. on November 30, 2020.

The landlord is provided a Monetary order in the sum of \$4001.00 to serve and enforce upon the tenant.

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: November 03, 2020

Residential Tenancy Branch