



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Five Star Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month to End Tenancy for Cause ("1 Month Notice") and orders for the landlord to comply with the Act, regulations or tenancy agreement.

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 confirmed that the parties had exchanged their respective hearing materials and I admitted them into evidence for consideration in making this decision.

I confirmed the tenant continues to occupy the rental unit and the tenant seeks to continue the tenancy. As such, I find the primary issue to resolve is the tenant's request for cancellation of the 1 Month Notice. The tenant's request for orders for compliance was expressed in very vague terms on the Application for Dispute Resolution and not sufficiently set out. Further, it was not related to the primary issue to resolve. Accordingly, the tenant's request for orders for compliance were dismissed, with leave to reapply, pursuant to the authority afforded me under section 59 of the Act and Rule 2.3 of the Rules of Procedure.

The name of the landlord was amended to reflect the corporate name as identified on the tenancy agreement and the 1 Month Notice.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. If the 1 Month Notice is upheld, when should the Order of Possession take effect?

Background and Evidence

The tenancy started on December 1, 2017 on a month to month basis. The tenant paid a security deposit of 875.00 and a “utility deposit” of \$200.00. The rent was originally set at \$1750.00 on the first day of every month; however, it has increased by way of Notices of Rent Increase to its current rate of \$1865.00 per month.

The parties provided consistent evidence that the security deposit has been applied to rent due for the month of April 2020 and \$193.00 of the “utility deposit” has been applied to utilities of March 5, 2020. During the hearing, I informed the parties that a landlord may not collect a “utility deposit” under the Act and that where a tenant pays an unlawful deposit the tenant may recover the unlawful deposit by deducting it from rent otherwise payable. As such, the tenant is entitled to deduct \$7.00 from rent otherwise payable to recover the balance of the “utility deposit”.

On October 31, 2020 the landlord issued a One Month Notice to End Tenancy for Cause (“1 Month Notice”) with an effective date of November 30, 2020. The landlord’s agent stated it was personally served upon the tenant on October 31, 2020. The tenant testified that it was given to her sister on October 31, 2020 while her sister was staying at the rental unit and the tenant received it when she got home later on October 31, 2020. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The 1 Month Notice indicates the following reasons for ending the tenancy on page 2:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)	
<input checked="" type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
<input checked="" type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk

The landlord provided Details of Cause on the third page of the 1 Month Notice; however, the font is very small and the landlord reproduced the content on another page that was attached to the 1 Month Notice.

With respect to repeated late payment of rent, the landlord provided a listing of the months the tenant paid rent late and the dates payment was received in full. The listing shows the tenant was late paying rent for the month of November 2019 and then every month from January 2020 through October 2020. The tenant did not dispute the accuracy of the listing as put forth by the landlord. The tenant also acknowledged that she was late paying rent for the subsequent months of November 2020, December 2020 and January 2021.

The tenant stated that she has had difficulty coming up with the rent money as she is no longer working and is on income assistance which is insufficient to pay the rent in itself and she has to rely on other sources of income such as child support or other organizations.

The tenant stated that there is a “five day grace period” to pay the rent every month even though she conceded that on some occasions she did not pay the rent in full during the first five days of the month; however, she often informed the landlord that she was going to pay late.

The landlord’s representative stated there was no agreement between the parties with respect to a five day grace period. Rather, it was the tenant that told the landlord that she had a five day grace period. The landlord’s representative suspects the tenant may have been thinking of the five day period a tenant has to pay outstanding rent to nullify a 10 Day Notice to End tenancy for Unpaid Rent if one were issued.

The tenant acknowledged that she had requested the landlord serve her with a 10 Day Notice on one occasion so that she could get funds from a program and the landlord did give it to her.

During the hearing, I informed the parties of my preliminary finding that the landlord had a basis to end the tenancy for repeated late payment of rent and I found it unnecessary to go into great detail with respect to the other reasons indicated on the 1 Month Notice.

I explored effective date of an Order of Possession should one be issued to the landlord. The tenant requested that if one is issued that she be permitted occupancy until April 30, 2021. The landlord was agreeable to accommodating the tenant’s request

provided she pay rent on time and in full for the remainder of the tenancy. The landlord's representative requested a conditional Order of Possession that may be served and enforced in the event the tenant failed to pay rent for the duration of the tenancy.

Analysis

Upon consideration of the evidence before me, I provide the following findings and reasons.

I accept the tenant's position that the subject 1 Month Notice was given to her sister who was staying with the tenant at the rental unit on October 31, 2020. Section 88 of the Act permits a landlord to give a document to an adult person who apparently resides with the tenant at the rental unit. Further, the tenant acknowledged she received the 1 Month Notice later in the day on October 31, 2020 and she failed to dispute it within the time limit for doing so. As such, I find the 1 Month Notice was sufficiently served in accordance with the Act and the tenant was not prejudiced by it being given to her sister.

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. Where a notice indicates several reasons for ending the tenancy, it is sufficient to end the tenancy where one of the reasons is proven.

Under section 47(1)(b) of the Act, a landlord may end a tenancy where "the tenant is repeatedly late paying rent". The 1 Month Notice served upon the tenant indicates this reason for ending the tenancy and the landlord provided a detailed listing of the months where rent was paid late. The tenant did not refute the accuracy of the listing.

Effective March 18, 2020 Ministerial Orders precluded landlords from issuing any notices to end tenancy due to the COVID-19 pandemic. Starting June 23, 2020 the prohibition on issuing certain types of notices to end tenancy was lifted; however, a landlord was still precluded from issuing a 10 Day Notice to End Tenancy for Unpaid Rent for rent payable between the "specified period" of March 18, 2020 and August 17, 2020 and a landlord was precluded from considering any late payments of rent during this specified period as a reason for ending a tenancy for repeated late payment of rent. As such, I find the tenant's payments of rent for the months of April 2020 through August 2020 cannot be considered in calculating the number of months the tenant paid rent late. Therefore, I find the tenant was late paying rent on the first of the month for

the months of: November 2019, January 2020, February 2020, March 2020, September 2020 and October 2020 when the subject 1 Month Notice was issued, for a total of six late payments.

Residential Tenancy Branch Policy Guideline 38: Repeated Late Payment of Rent provides information and policy statements with respect to ending a tenancy for repeated late payment of rent. I have reproduced the policy guideline below:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

[My emphasis underlined]

Based on all of the above, I find the tenant has been repeatedly late paying rent, having paid rent late for six months (after excluding the “specified period”) when the 1 Month Notice was issued. I find there to be insufficient evidence to demonstrate the landlord agreed to allow a five day grace period or otherwise waived entitlement to receive rent after the first day of the month as required under the tenancy agreement. Also, a

tenant's source of income, or lack thereof, is not a legal basis to waive the tenant's obligation to pay rent in full and on time, except as provided under the Ministerial Orders described above. Therefore, I find there is sufficient basis for the landlord to end the tenancy for repeated late payment of rent.

Having been satisfied the landlord had sufficient basis to end the tenancy for repeated late payment of rent, it is unnecessary to determine whether the landlord had sufficient grounds to end the tenancy for the other two reasons indicated on the Notice.

In keeping with the above, I uphold the 1 Month Notice for repeated late payment of rent and I dismiss the tenant's request for cancellation.

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and, upon review of the 1 Month Notice, I am satisfied it meets the form and content requirements of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Given the tenant's request to permit her occupancy until April 30, 2021 and the landlord's conditional agreement to her request, I provide the landlord with two Order of Possession with this decision:

- An Order of Possession that is effective on April 30, 2021 that may be served and enforced in any circumstance; and,
- A conditional Order of Possession that is effective 10 days after service upon the tenant. This condition Order may only be served upon the tenant if she fails to pay the monthly rent of \$1865.00 by the first day of the month for that month.

Conclusion

The 1 Month Notice dated October 31, 2020 is upheld and the tenant's application to cancel it is dismissed.

The landlord is provided two Order of Possession with this decision:

- An Order of Possession that is effective on April 30, 2021 that may be served and enforced in any circumstance; and,
- A conditional Order of Possession that is effective 10 days after service upon the tenant. This condition Order may only be served upon the tenant if she fails to pay the monthly rent of \$1865.00 by the first day of the month for that month.

The tenant's request for orders for compliance was dismissed with leave to reapply.

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: January 22, 2021

Residential Tenancy Branch