



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, LRE**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70.

The tenant attended the hearing and was assisted by his sister, DM. The landlord was represented at the hearing by his son and daughter, VD and FB ("landlords"). The landlords provided documentation to show they are authorized to represent the landlord for this hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

Preliminary Issue

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. At the commencement of the hearing, I advised the parties that I would be exercising my discretion to hear the most important issue in the Application for Dispute Resolution, whether to uphold or cancel the notices to end tenancy. The tenant's application seeking an order suspending the landlord's right to enter the rental unit was dismissed with leave to reapply.

After serving the tenant with the first notice to end tenancy, the landlord served another one on January 2, 2021. The tenant amended his Application for Dispute Resolution to dispute this notice to end tenancy and the merits of this application were considered as part of this hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to establish the grounds for ending the tenancy?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on June 1, 1998, according to their records. There is no tenancy agreement on record for this tenant as the tenancy is over 22 years old. The landlord has record of a security deposit of \$300.00 being paid and the rent is to be paid on the first day of each month.

On October 31, 2020, the co-landlord, FB personally served the tenant with a One Month Notice To End Tenancy for Cause. A copy of the notice to end tenancy was provided as evidence. It provides an effective date of November 30, 2020 and gives the following reasons for ending the tenancy:

1. Tenant is repeatedly late paying rent
2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

5. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlords testified that since assuming management of the building approximately 2 years ago, they have prioritized a clean, safe environment for the tenants. 2 important rules are to be quiet, caring neighbours who care for one another. The second is to pay rent on time.

On September 8, 2019, the landlords served each tenant with a notice to pay their rent on time. The landlord alleges the tenant was late paying rent a total of 8 consecutive months from July 2019 to February 2020 and also paid July 2020 rent late. According to their records, the tenant only paid \$600.00 of the \$745.00 rent for July on July 1st. The remainder of July's rent remained unpaid and the tenant's account went into arrears. On August 1st, the tenant once again only paid \$600.00 of the \$745.00 rent, making the tenant's arrears account grow to \$290.00.

According to column "B" of the landlord's spreadsheet, labelled "Amt. Paid on the 1st of the month", on September 1st, the tenant paid his rent on time, adding an additional \$5.00 to the arrears, reducing the arrears to \$285.00. The tenant paid \$900.00 on October 1st, \$845.00 on November 1st and \$750.00 on December 1st. On December 11th, the remaining \$25.00 in arrears was fully paid off. I note that the December 11th is the first time the landlord notes the payment dates in his spreadsheet, when late payments are made.

On January 2, 2020, the tenant paid his rent for January. On February 1st, the tenant only paid \$650.00 of his rent, paying the remaining \$95.00 on February 7th. The tenant remained vigilant in paying his rent on the first of the month until July 2020, when it was paid on July 2nd.

The landlord testified the tenant was given breach letters on December 2, 2019 and on January 3, 2020 informing the tenant breached a material term of the tenancy by not paying rent on the first day of the month. On January 2, 2020, the landlord served the tenant with a second notice to end tenancy for breaching a material term of the tenancy by paying his rent late.

The tenant and his assistant gave the following testimony. The landlord refused to provide a copy of the tenancy agreement to the tenant despite asking for it. Pointing to the tenant's evidence of bank statements, the tenant testified that his pension income is deposited into his account on the first day of the month. On the first day of the month, the tenant withdraws enough money to pay his rent and other necessities.

The cash withdrawals noted on the bank statements, made on the first day of each month, is proof that rent was paid on the first day of each month.

The tenant pays his rent in cash and testifies he was not provided with receipts for the cash rent payments. He and the landlord have been family friends for over 50 years and the landlord himself has never had any issues with him. The tenant testified that the landlord, not the landlord's agents present at the hearing, was lenient in allowing him to pay on the 2nd of the month if a holiday fell on the 1st. The tenant did not get this agreement in writing, or none was provided as evidence for this hearing.

Since the landlord sent him notice to pay by cashier's cheque, money order, or bank draft due to the covid-19 pandemic, he's been paying as directed, on time.

Analysis

Pursuant to section 88 of the *Act*, I find the tenant was personally served with the first One Month Notice To End Tenancy for Cause on October 31, 2020. The tenant filed to dispute the notice to end tenancy on November 3, 2020, within the 10-day timeframe allowed in accordance with section 47. Likewise, the tenant amended his Application for Dispute Resolution to dispute the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served upon him on January 2nd.

The landlord seeks to end the tenancy under section 47(1)(b) for the tenant repeatedly paying rent late. Residential Tenancy Branch Policy Guideline PG-38 [Repeated Late Payment of Rent] provides guidance to landlords and tenants regarding this issue.

Three(3) 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.

The landlord submits that the tenant was “repeatedly” late between July and December 2019 because the tenant had outstanding arrears that were being paid incrementally up until December 11th. I disagree with this characterization. According to the landlord’s own spreadsheet, column “B” indicates the tenant was paying additional amounts on the 1st day of the month between September and December to make up for arrears incurred in July and August of 2019.

I rely on the landlord’s spreadsheet because the landlord has not provided sufficient evidence of providing receipts for the cash rent payments made by the tenant for 2019.

Section 26 of the *Act* states:

(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.
(bold emphasis added)

Likewise, the tenant does not have proof of payment by cash which I would expect him to retain, owing to the fact that on September 8, 2019, the landlord gave all the tenants a letter asking for payment on the first day of the month by personal check.

I remain cautious in relying on the landlord’s spreadsheet as evidence to prove the tenant was late in paying rent because the tenant has no way to disprove the accuracy of the data entered into it.

For the months of August, September and October and November, 2019, the tenant has been making additional payments in rent. The only rational reason for the additional payments is to make up for arrears in rent. From column “c” of the landlord’s spreadsheet, the amount of arrears decrease as the additional payments are made. Based on this reasoning, I am satisfied there was at least one incident of rent not being fully paid by the tenant in July or August of 2019.

The landlord has provided documentary evidence by means of a receipt to indicate the tenant paid only \$650.00 of his February rent on February 1, 2020. The remainder was paid off on February 7th. I am satisfied by this evidence that the tenant was late in paying his rent for the second time.

Lastly, the landlord alleges another late payment of rent for July, 2020. The landlord testified the payment was made on July 2nd and points to the tenant's evidence showing the bank statement where the tenant withdraws enough money to pay rent on July 2nd. The landlord further testified that the tenant received his pension on June 28th, making it possible for the tenant to pay his rent by July 1st.

The tenant argues that he and the landlord, not the agents appearing at today's hearing, have an agreement whereby the tenant could pay his rent a day late if there is a holiday falling on the 1st of the month. Once again, section 26 of the *Act* is clear: A tenant must pay rent when it is due under the tenancy agreement. Unless the tenant has a contrary agreement in writing, signed by the landlord, the tenant is required to pay on the first day of the month. I find insufficient evidence from the tenant to prove such an agreement existed. For this reason, I find the tenant was late in paying July 2020 rent.

I have found the tenant late in paying rent on three occasions, July 2019, February 2020 and July 2020. I am satisfied the landlord has sufficiently proven the reason for ending the tenancy under section 47(1)(b). I therefore uphold the landlord's notice to end tenancy for cause issued on October 31, 2020.

Section 55(1) states that 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 the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have reviewed the landlord's notice to end tenancy and find the notice complies with the form and content provisions of section 52 of the *Act*. As the effective date stated on the notice to end tenancy has passed, the landlord is granted an order of possession effective 2 days after service.

As the landlord has proven one of the reasons for ending the tenancy stated on the notice was valid, the facts related to the remainder of the reasons stated on the notice and analysis regarding those reasons for ending the tenancy have not been included in this decision.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on 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: January 30, 2021

Residential Tenancy Branch