



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 scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice") and orders of the landlords 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.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. The parties were affirmed and ordered to not make a recording of the proceeding.

The tenant confirmed that she continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 1 Month Notice and I severed the other remedies sought by the tenant on this Application for Dispute Resolution pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of

possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The other remedies sought by the tenant are dismissed with leave to reapply.

It should be noted that the tenant had two witnesses appear at the commencement of the hearing. The witnesses stated they were asked to appear by the tenant to provide evidence concerning unlawful entry into the rental unit by the landlords. The witnesses were excluded from the hearing with instruction to wait to be called. As the issue of unauthorized entry was severed from this Application for Dispute Resolution, the witnesses were not called to testify during this proceeding.

During the hearing, the parties turned their minds to resolving their dispute concerning the 1 Month Notice by way of a mutual agreement. I was able to facilitate a mutual agreement between the parties and I have recorded their agreement by way of this decision and the Orders that accompany it.

Issue(s) to be Decided

What are the terms agreed upon with respect to ending the tenancy?

Background and Evidence

During the hearing, the parties reached a mutual agreement in settlement of their dispute concerning the 1 Month Notice dated March 19, 2021 with a stated effective date of April 30, 2021, as follows:

1. The tenancy shall end no later than July 31, 2021 in any circumstance and the landlords are provided an Order of Possession with an effective date of July 31, 2021.
2. The tenant may end the tenancy early than July 31, 2021 and, if so, the landlords waive their entitlement to receive one month of advance notification from the tenant; however, the tenant shall give the landlords notification that she is ending the tenancy early immediately upon securing new living accommodation. The tenant is considered to have secured new living accommodation by signing a new tenancy agreement and/or paying a security deposit for the new living accommodation.

3. The tenant is obligated to pay rent to the landlords for the remaining months of tenancy in full and by the first day of the month by e-transfer, plus the \$20.00 per month the tenant is required to pay to satisfy pre-existing rental arrears. The monthly rent is \$1400.00 and the arrears payment is \$20.00 per month. At the time of this hearing, the balance of the rental arrears is \$140.00. Since the tenant's e-transfers are limited to \$1000.00 per day, the parties agree that the tenant shall pay \$420.00 on the last day of the preceding month and the balance of \$1000.00 on the first day of the month. To illustrate (assuming the tenancy continued until July 31, 2021):
 - a. \$420.00 is to be e-transferred on May 31, 2021 and \$1000.00 on June 1, 2021 for the June 2021 rent and the \$20.00 arrears payment.
 - b. \$420.00 is to be e-transferred on June 30, 2021 and \$1000.00 on July 1, 2021 for July 2021 rent and \$20.00 for the arrears payment.
4. Should the tenant encounter issues with sending e-transfer payments outlined above, it shall be upon the tenant to retrieve a sufficient amount of cash and contact the landlord referred to by initials CM to arrange for delivery of the cash and receiving a receipt from the landlord.
5. Should the tenant fail to pay the full amount of rent by the first day of the month, the landlords may serve the tenant with the conditional Order of Possession that is provided to the landlords with this decision. The conditional Order of Possession may only be served where the tenant failed to pay the full monthly rent by the first day of the month and no other reason. The soonest the conditional Order of Possession may be served in such a circumstance is the second day of the month.
6. The tenant authorizes the landlords to deduct from the security deposit the balance of the rental arrears that remains outstanding at the end of the tenancy after taking into account the rental arrears payments made under term 3.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlords with two Orders of Possession:

- a) An Order of Possession effective at 1:00 p.m. on July 31, 2021 that may be served and enforced in any circumstance.
- b) A conditional Order of Possession effective two (2) days after service upon the tenant. The conditional Order of Possession may only be served and enforced in the event the tenant fails to pay the full monthly rent payment on or before the first day of the month.

It is expected that there will be a balance of rental arrears still outstanding at the end of the tenancy as the arrears payments of \$20.00 per month will be insufficient to satisfy the current balance of \$140.00 by the end of the tenancy. The landlords are authorized to deduct the outstanding balance of the rental arrears from the tenant's security deposit at the end of the tenancy. Any other deductions from the security deposit must be accomplished in a manner that complies with section 38 of the Act.

Conclusion

The parties reached a mutual agreement with respect to ending the tenancy that I have recorded in this decision. In recognition of the mutual agreement, I have provided the landlords with an Order of Possession effective July 31, 2021 and a conditional Order of Possession effective two (2) days after service that may be served and enforced only in the event the tenant fails to pay the full monthly rent by the first day of the month for the remaining months of this tenancy.

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: May 12, 2021

Residential Tenancy Branch