



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 08, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated March 01, 2021 (the “Notice”).

The Tenant appeared at the hearing with W.R. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties provided the correct rental unit address which is reflected on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence. The Tenant testified that another written tenancy agreement was signed by the parties after the agreement in evidence. The Landlord testified that there were two written tenancy agreements signed between the parties and that the one in evidence is the most current tenancy agreement. The parties agreed that rent is \$1,900.00 per month due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are repeated late payment of rent and illegal activity. The Notice states that the Tenant paid rent late February 03, 2020, October 02, 2020, January 04, 2021 and February 02, 2021.

The Tenant took issue with the Notice being dated March 01, 2021 and having an effective date of May 01, 2021, which is more than one month's notice.

The parties agreed the Notice was left in the mailbox at the rental unit March 01, 2021 and that the Tenant received the Notice the same date.

The Landlord confirmed the Tenant paid rent late February 03, 2020, October 02, 2020, January 04, 2021 and February 02, 2021.

The Tenant agreed he paid rent late February 03, 2020, October 02, 2020, January 04, 2021 and February 02, 2021. The Tenant submitted that three of these late payments were made during the pandemic. The Tenant testified that the Landlord only gave him a 10 Day Notice in relation to rent in October.

I heard the parties on the ground for the Notice relating to illegal activity; however, I do not find it necessary to outline their testimony here.

The Landlord sought an Order of Possession effective July 31, 2021.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the "Act") states:

26 (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.

The Notice was issued pursuant to section 47(1)(b) of the *Act* which states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. I accept that the Tenant received the Notice March 01, 2021. The Tenant disputed the Notice March 08, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

Policy Guideline 38 addresses repeated late payment of rent and states:

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.

The parties agreed the Tenant paid rent late February 03, 2020, October 02, 2020, January 04, 2021 and February 02, 2021.

The Tenant submitted that three of the late payments were made during the pandemic. The *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (the “*Regulation*”) addresses notices to end tenancy issued pursuant to section 47 of the *Act* during the pandemic. Section 7(1) of the *Regulation* places limits on issuing notices to end tenancy for repeated late payment of affected rent. Affected rent is rent that became due between March 18, 2020 and August 17, 2020. Given this, the Landlord was permitted to issue the Notice for late payment of rent outside the period from March 18, 2020 to August 17, 2020. Here, the late payments relied on are outside of this period.

In relation to the Landlord only issuing one 10 Day Notice, I am not satisfied this invalidates the Notice. The Tenant testified that he was issued the 10 Day Notice in October. The 10 Day Notice should have alerted the Tenant to the fact that the Landlord was enforcing the term that rent is due by the first day of each month. The Tenant paid rent late two more times after this, and then was issued the Notice.

Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice issued pursuant to section 47(1)(b) of the *Act*. Here, the Landlord is relying on four late payments, which is sufficient pursuant to Policy Guideline 38.

I note that the four late rent payments occurred within one year. I do not find that the late payments were so far apart that the Tenant cannot be said to be “repeatedly” late given the late payments occurred within one year.

The last late rent payment was in February of 2021 and the Notice was issued March 01, 2021, the following month. I am not satisfied the Landlord failed to act in a timely manner and thus waived reliance on section 47(1)(b) of the *Act*.

In the circumstances, I am satisfied the Landlord had grounds to issue the Notice and uphold the Notice. Given this, I dismiss the Tenant’s dispute of the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*. The Landlord was permitted to extend the effective date past one month from the date the Notice was issued. The effective date on the Notice does not invalidate the Notice.

I have dismissed the dispute of the Notice and upheld the Notice. I have found that the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on July 31, 2021.

Conclusion

The Notice is upheld, and the dispute is dismissed without leave to re-apply. The Landlord is issued an Order of Possession effective at 1:00 p.m. on July 31, 2021. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 16, 2021

Residential Tenancy Branch