



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDCT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) issued on March 7, 2021, to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued on March 7, 2021, for a monetary order for compensation for monetary loss or other money owed, for an order for the Landlord to comply with the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”), the Tenant and the Tenant’s Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The parties were both provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters

I have reviewed the Tenant's application, and I note that they have applied to cancel two Notices to end tenancy as well as three other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notices. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

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.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for a monetary order for compensation for monetary loss or other money owed and for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the Notices and recover the filing fee.

Preliminary Matters - Landlord Request for Adjournment

At the outset of the hearing, the Landlord requested that the hearing be adjourned because they need more time to prepare their case, and their Attorney had been called into court at the last minute on another matter. The Landlord testified that they had just provided their documents to their Attorney a few days ago and that due to a scheduling conflict, their Attorney was unable to attend today's proceedings and that due to these reasons, they feel an adjournment is warranted.

The Landlord was asked why they had not approached the Residential Tenancy Branch and the Tenant before today's proceedings to request, more time to prepare, and that this matter be rescheduled. The Landlord testified that they were informed, just yesterday, that their Attorney could not attend today's proceedings.

The Landlord also confirmed, when asked by this Arbitrator, that they had not submitted any documentary evidence to these proceedings.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that either the applicant or the respondent or their agent may request at the hearing that it be adjourned.

Rule 7.9 (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment. Considerations for a request to adjourn include:

- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I have reviewed the Landlord's request for an adjournment, and based on their stated reason for their request, I find that, on a balance of probabilities, that it was this Landlord's own actions or inactions that have given rise to the need for this request. Specifically, I noted that the Landlord failed to submit any documentary evidence to these proceedings to support their Notices; which pursuant to section 3.15 must have been received by the Residential Tenancy Branch and the Tenant no less than seven days before the date of these proceedings, a date long before the Landlord claims they were notified that their Attorney could not attend these proceedings.

This hearing has been scheduled for 96 days, which I find to have been a sufficient and fair opportunity for this Landlord to prepare their case. Therefore, I decline to adjourn today's hearing.

Issues to be Decided

- Should the 10-Day Notice issued on March 7, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the One-Month Notice issued on March 7, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on April 1, 2019, as a 13-month fixed term tenancy, at rolled into a month-to-month tenancy at the end of the initial fixed term as of April 30, 2018. Rent in the amount of \$2,600.00 is to be paid by the first day of each month, and the Landlord collected a security deposit of \$1,300.00 and a \$1,300.00 pet damage deposit at the outset of this tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenant on March 7, 2021, by Canada Post mail. The 10-Day Notice listed an effective date of March 2, 2021, and an outstanding rent amount of \$8,600.00.

The Landlord testified that the Tenant had paid the required rent for the month but that they had not paid the rent due under the Repayment Plan for Covid-19 affected rent period that was outstanding for this tenancy.

The Tenant testified that they had paid the required rent for each month and had been making payments towards their past due rent that was outstanding for the Covid-19 affected rent period. The Tenant testified that they understand that they own the rent for the Covid-19 period but that the Landlord had not issued the required Repayment plan form, so they were just making extra payment towards the outstanding amount whenever they could. The Tenant testified that since the Landlord had not issued the Repayment plan form to them, they could not end their tenancy for rent due under the Covid-19 affected period.

The Landlord testified that they had issued the required Repayment plan form to the Tenant but agreed that they had not submitted a copy of that form into documentary evidence for these proceedings.

The Landlord testified that they served a One-Month Notice to end tenancy for Cause to the Tenant on March 7, 2021, by Canada Post Mail. A copy of this Notice was submitted into documentary evidence by the Tenant. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenant must move out of the rental unit by April 30, 2021. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had paid rent late six times in the last year, in November 2020, December 2020, February 2021, March 2021, April 2021 and May 2021.

The Tenant testified that they paid the rent on time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Pursuant to the deeming provision set out in section 90 of the *Act*, I find that the Tenant received the 10-Day notice on March 12, 2021 and that pursuant to section 46 of the *Act*, they had until March 22, 2021, to pay the indicated outstanding amount in rent.

I accept the agreed-upon testimony of these parties that the Tenant was outstanding in their rent payments for this tenancy in the amount stated on this 10-Day Notice, and that they did not pay this full amount within the required five days; however, I also accept the agreed-upon testimony of these parties that this rent amount indicated on this Notice is for the Covid-19 affected rent period.

I have reviewed the testimony and documentary evidence in this case, and I find that the parties have offered conflicting verbal testimony regarding the issuance of the Repayment Plan for the Covid-19 affect rent due for this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances

related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

As the Landlord did not submitted any documentary evidence to support their verbal claims made during these proceedings, I find that the Landlord has failed to meet their onus to establish their claim to terminate the tenancy for the reason indicated on this 10-day Notice they issued.

Therefore, I grant the Tenants' application to cancel the 10-Day Notice issued March 7, 2021, and I find the 10-Day Notice is of no force or effect.

As for the One-Month Notice, pursuant to the deeming provision set out in section 90 of the *Act*, I find that the Tenant received the One-Month Notice to End Tenancy on March 12, 2021, five days after it was mailed. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Accordingly, the Tenant had until March 22, 2020, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on March 14, 2021, within the statutory time limit.

I have reviewed the testimony and documentary evidence in this case, and I find that the parties have offered conflicting verbal testimony on the payment of rent for this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

Again, as the Landlord did not submit any documentary evidence to support their verbal claims made during these proceedings, I find that the Landlord has failed to meet their onus to establish their claim to terminate the tenancy for a reason indicated on the One-Month Notice they issued. Therefore, I grant the Tenants' application to cancel the One-Month Notice issued March 7, 2021, and I find the One-Month Notice is of no force or effect.

Overall, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for any of the reasons indicated on the two Notices they issued. Therefore, I grant the Tenant's application to cancel the 10-Day Notice and the One-Month Notice issued March 7, 2021, and I find both of these Notices have no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notices, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is granted permission to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the 10-day Notice, issued March 7, 2021, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

The Tenant's application to cancel the One-Month Notice, issued March 7, 2021, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: June 28, 2021

Residential Tenancy Branch