



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Anchor Rental Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing was originally scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated March 2, 2021. The tenant submitted an Amendment to dispute a One Month Notice to End Tenancy for Cause dated April 14, 2021 ("1 Month Notice") and provided a copy of two of the three pages of the 1 Month Notice. The tenant also filed an Amendment to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 14, 2021 but the tenant did not provide a copy of it.

The landlord's agent and resident manager appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open over 30 minutes to give the tenant the opportunity to appear.

The landlord's agents were affirmed and ordered to not make an unofficial recording of the proceeding.

The landlord confirmed the tenant served her proceeding package and evidence upon the landlord, although it appeared the evidence was incomplete and the package was missing the hearing details. The landlord called the Residential Tenancy Branch and obtained a copy of the Notice of Dispute Resolution Proceeding and the landlord was prepared to proceed. The landlord confirmed that the tenant served the landlord with her Amendment to dispute the 1 Month Notice dated April 14, 2021; however, they did not receive an Amendment concerning the 10 Day Notice dated April 14, 2021.

The landlord submitted that its evidence package, including copies of Notices to End tenancy issued on March 2, 2021; April 14, 2021; May 2, 2021 and May 28, 2021 as well as the tenant's ledger, were put in the tenant's mailbox on June 30, 2021 by the resident manager in the presence of a witness. The landlord provided a signed Proof of

Service documents with respect to service of the landlord's evidence package. I admitted the landlord's evidence for consideration in making this decision.

As for the 10 Day Notice dated March 2, 2021 the landlord had already applied for an Order of Possession based on that notice and the Arbitrator concluded the 10 Day Notice served by the landlord was on an old form no longer approved by the Director (file number referenced on the cover page of this decision). Since a final and binding decision has already been made on the 10 Day Notice dated March 2, 2021, I informed the landlord's agents that I cannot overturn the decision already made and I would not issue an Order of Possession based on that 10 Day Notice. The landlord's agents indicated they understood and they stated they would like an Order of Possession based on the 1 Month Notice the tenant sought to cancel by way of the Amendment. I proceeded to hear from the landlords with respect to determining the validity of the 1 Month Notice dated April 14, 2021.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 1 Month Notice dated April 14, 2021 under section 55(1) of the Act?

Background and Evidence

The tenancy started on February 1, 2019. The tenant paid a security deposit of \$750.00 and was required to pay rent of \$1500.00 on the first day of every month pursuant to the written tenancy agreement.

On April 14, 2021 the landlord issued the subject 1 Month Notice with an effective date of May 31, 2021. It is in the approved form and is duly signed and completed. On the second page the stated reason for ending the tenancy is that the tenant is *repeatedly late paying rent*. In the Details of Cause, the landlord described how the tenant has paid rent late several times in the last year and lists several months.

The resident manager testified that he gave the 1 Month Notice dated April 14, 2021 to the tenant in person at the rental unit. At the same time he tried to serve the tenant with a 10 Day notice dated April 14, 2021 but she refused to take it so on April 15, 2021 he returned and posted both the 1 Month Notice and 10 Day Notice on the door of the rental unit. The tenant submitted the Amendments on April 21, 2021 seeking to have these notices cancelled.

The landlord stated that after the tenant filed to amend her application, the landlord served her with another 10 Day notice dated May 2, 2021 and another 1 Month Notice dated May 28, 2021 but she did not file to dispute those notices or amend her application. The landlord provided copies of these Notices to End Tenancy in its evidence package.

The landlord confirmed that the tenant did eventually pay the rent that had been outstanding and the landlord accepted payment for months up to and including July 2021 for use and occupancy only. Given the tenant's payment for occupation for July 2021, the landlord requested an Order of possession effective on July 31, 2021.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

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 reviewed the 1 Month Notice dated April 14, 2021 and I find it is on the approved form and is duly signed and completed.

As for the reason for ending the tenancy, Residential Tenancy Branch Policy Guideline 38: *Repeated Late Payment of Rent* provides that three or more late payments constitute repeated late payment. The landlord provided evidence the tenant had been late paying rent at least three times when the 1 Month Notice was issued (September 2020, December 2020, February 2021, March 2021, and April 2021). The tenant did not appear or present evidence to contradict the landlord's submissions that the tenant has been repeatedly late paying rent or any other basis for me to cancel the 1 Month

Notice and I do not see a reason to cancel it. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's request that I cancel it.

In light of the above, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Considering the tenant has paid for use and occupancy for the month of July 2021, I provide the landlord with an Order of Possession effective on July 31, 2021, as requested by the landlord.

Conclusion

The landlord is provided an Order of Possession effective July 31, 2021 under section 55(1) of the Act.

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: July 16, 2021

Residential Tenancy Branch