



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord make repairs to the rental unit or property; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and the landlord was accompanied by his spouse. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the primary application deals with a notice to end the tenancy. Therefore, the application for an order that the landlord make repairs to the rental unit or property is not considered in this Decision.

The parties also agreed that the given name and surname of one of the tenants has been transposed, and the frontal page of this Decision reflects an amendment to the Style of Cause.

During cross examination, the landlord questioned one of the tenants about an Affidavit of the tenant which was provided to the landlord and uploaded to the Residential Tenancy Branch automated system, but did not oppose inclusion of the Affidavit. No other issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2017 and expired on July 31, 2018 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. A new tenancy agreement was prepared and signed by the parties each year, the newest being for a tenancy commencing on August 1, 2019 and ending on July 31, 2020. Rent in the amount of \$2,150.00 per month is payable on the 1st day of each month and has not increased during the tenancy. The landlord collected a security deposit from the tenants in the amount of \$1,075.00 as well as a pet damage deposit in the amount of \$1,075.00, both of which are still held in trust by the landlord. The rental unit is a single-family home, and a copy of the latest tenancy agreement has been provided as evidence for this hearing.

On May 12, 2021 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by email, and a copy has been provided for this hearing. It is dated May 12, 2021 and contains an effective date of vacancy of June 30, 2021. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site/property/park.

No receipts are issued for rent payments, however the landlord testified that for this year rent was paid on January 2, 2021; February's rent was paid on time; March 8, 2021; April 4, 2021 and May 2, 2021. June and July's rent were paid on time.

The landlord withdraws the remaining reasons for ending the tenancy, testifying that he realizes the cause of mold and leaking is complicated; there could be a cold wall causing condensation. The tenants ought to have told the landlord, but now it's too complicated to prove that reason for ending the tenancy.

The tenant (KM) testified that when the tenants forgot to pay rent, they paid it as soon as they could. January 1 was a holiday, so the payment wasn't processed until the next day. The same applied to rent for April due to Easter.

The landlord never deposited the post-dated rent cheques for the first 2 years; it wasn't an issue for the landlord. At the time, it caused financial worry because on the 10th of the month or the 14th, the landlord would cash the cheques. It was an acceptable and established practice because the landlord never did it on time. For example, in October, 2018 the landlord deposited 2 rent cheques at once. As soon as the landlord said rent wasn't paid on time, the tenants paid it within hours.

The tenants had preferred to give post-dated cheques and the landlord requested e-transfers to be easier for the landlord, but not for the tenants. However, the tenants started to pay by e-transfer in June, 2019. If the landlord had raised an issue with late rent, the tenants would have immediately given post-dated cheques, but it never came up. The landlord established that first. It was not established as a necessity, and any reminders the tenants received after they started making e-transfers, were "gentle reminders," and dealt with by the landlord as, "No problem." If the tenants had realized the gravity of the situation, they would have given post-dated cheques.

Although no receipts were issued, the landlord submits that emails were exchanged between the parties wherein the landlord stated that the rent payments for June and July, 2021 were being accepted for use and occupancy only and did not serve to reinstate the tenancy.

Analysis

Firstly, I have reviewed the latest tenancy agreement provided for this hearing which specifies that rent is due on the 1st day of each month. A minimum of 3 late payments are required in order for rent to be deemed repeatedly late. I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, which states, in part:

"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."

“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.”

In this case, March, April and May, 2021 rents were all paid after the first of the month, and the landlord issued the notice to end the tenancy in May, 2021. In the circumstances, I find that the tenants have been repeatedly late paying rent. Therefore, the tenant’s application to cancel the One Month Notice to End Tenancy for Cause is dismissed.

The *Residential Tenancy Act* specifies that where I dismiss a tenant’s application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Conclusion

For the reasons set out above, the tenants’ application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 20, 2021

Residential Tenancy Branch