



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On June 9, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated June 6, 2021, (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted, and to stop any recordings.

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 are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure require that a respondent serve a copy of any documentary evidence to the applicant and to the Residential Tenancy Branch not later than seven days before a hearing.

The case management system indicates that the Landlord uploaded her documentary evidence to the Residential Tenancy Branch (“the RTB”) on the day of the hearing. The Tenant stated that he was not served with a copy of the Landlord’s evidence.

The Landlord was asked whether she served the Tenant with a copy of her documentary evidence prior to the hearing and she replied that she gave some documents when she served him with the notice to end tenancy in June 2021 but did not serve the Tenant with a number of newer documents that have been provided to the RTB.

The Landlord was informed that it would not be fair for me to consider evidence that the Tenant has not received and has not had an opportunity to respond to. I find that the Landlord's evidence was not served in accordance with the RTB Rules of Procedure and the principles of natural justice and therefore the Landlord's documentary evidence is excluded.

Despite her documentary evidence being excluded, the Landlord wanted to proceed with the hearing.

Issue to be Decided

- Does the Landlord have sufficient cause/ reason to end the tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2020 as a one-year fixed term tenancy that has continued thereafter on a month-to-month basis. Rent in the amount of \$700.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$350.00. The Tenant provided a copy of the tenancy agreement.

The Landlord served the One Month Notice to the Tenant on June 6, 2021. The Notice has an effective date (the date the Tenant must move out) of July 31, 2021.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
- *Put the Landlord's property at significant risk*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Tenant disputed the One Month Notice on June 9, 2021 within the required time period.

The Landlord testified that the Tenant was late paying the rent for the months of February, March, and June 2021. The Landlord testified that the e-transfer of the rent for these months was received by the Landlord a minute or two after midnight and is late. The Landlord stated that after the One Month Notice was issued the Tenant was again late paying the rent for August and October 2021 for the same reason.

The Landlord stated that the Tenant is intentionally paying the rent this way as a manipulative tactic which is disrespectful and a breach of the tenancy agreement and Act.

In reply, the Tenant testified that he sent his rent payments within time and that he has no control on when the bank processes the transactions and deposits the rent into the Landlord's account. The Tenant stated that prior to auto deposit, when the Landlord had to input a password to receive the money transfer, the Landlord would often let the rent payment notification sit in her email box for over a week before completing the money transfer. The Tenant stated that the Landlord has not suffered any prejudice.

The Landlord testified that the Tenant shares the rental unit with other occupants under separate tenancy agreements. The Landlord stated that the Tenant has significantly interfered with these other occupants and has unreasonably disturbed the Landlord.

The Landlord stated that one occupant moved out of the rental unit because of the Tenant's behavior. The Landlord was asked whether this occupant reported his concerns to her during the tenancy and she replied that she was informed of an issue as he was moving out.

The Landlord stated that she received complaints about the Tenant from another occupant who subsequently moved out of the rental unit in March 2021. The Landlord stated that the occupant reported that there was an issue in February 2021 where the

Tenant barged into the bathroom pinching the occupants finger in the door and called her a dumb little girl. The Landlord stated that the Tenant confined the occupant in the unit for a period. The Landlord stated that the occupant reported this incident to police.

The Landlord was asked whether she took any action against the Tenant for this alleged bathroom incident and she stated no, because she was confused about the RTB process.

The Landlord testified that she began to receive insulting and abusive emails and texts from the Tenant, and she filed a police report for harassment. The Landlord stated that she received 38 text messages from the Tenant between February and June 2021. The Landlord stated that the messages stopped after the police spoke to the Tenant in early June 2021.

The Landlord stated that the Tenant is not maintaining the rental unit and the unit is suffering wear and tear. The Landlord stated that the rental unit is non-smoking, and she believes that the Tenant is smoking in the rental unit.

The Landlord stated that the Tenant's behavior has caused her emotional distress and anxiety and depression.

In reply, the Tenant stated that what the Landlord has said is lies. He stated that there was no interaction between him and the male occupant as the occupant was always in his room. He stated that he does not feel that the messages he sent to the Landlord were insulting, and that he stopped sending messages to the Landlord on June 4, 2021 after the police spoke to him.

The Tenant stated that what the Landlord said about an incident with the female occupant is not true and that he did not lock the female occupant in the house and that there was no report to police.

The Tenant stated that the Landlord was actually angry with the male occupant for moving out and said she was going to sue him.

The Tenant stated that the Landlord has not provided evidence showing the rental unit is in poor condition.

The Tenant's written submission indicates that the Landlord threatened to raise his rent to \$1,400.00 each month and the Landlord has not held previous occupants responsible

for cleaning the unit and dealing with an ill cat that got sick on the carpets and had fleas. The Tenant states that he does not smoke in the rental unit. The Tenant suggests that the Landlord is telling other occupants not to pay a share of hydro costs that he is paying for.

Analysis

Residential Tenancy policy guideline # 38 Repealed Late Payment of Rent provides the following guidance:

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.

In the matter before me, the Landlord has the burden of proof that the reasons for ending the tenancy in the Notice are valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

With respect to late payment of rent, I find that the tenancy agreement does not include a term specifying what time the rent must be paid. Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. I find that the Tenant is entitled to pay the rent to the Landlord on or before the first day of each month. The Tenant is entitled to pay the rent until midnight on the first day of each month.

I accept the Tenant's testimony that he paid the rent on time as I find it is reasonable to accept that the electronic money transfers are not always instantaneous and that it could take a few minutes for processing. I find that the tenancy is not ending for the reason of repeated late payment of rent.

I find that any allegations of harassment and abusive behavior in a tenancy are concerning. The Tenant denies there was a serious incident between him and the other occupants. The Tenant does not feel his messages to the Landlord were insulting. The Tenant does not agree that he is responsible for poor condition of the rental unit, and he submitted that he does not smoke in the rental unit.

The Landlord issued the notice to end tenancy and bears the burden of proving the allegations. When two parties provide equally believable but opposing testimony, the applicant must provide the stronger / better evidence.

In the case before me, the Landlord's evidence was excluded because she did not serve the Tenant with a copy of all the evidence prior to the hearing to allow the Tenant to know the case against him and have an opportunity to respond to it. The Landlord did not provide any detail regarding the context / reasons behind the Tenant's messages and there is no evidence before me of abusive or insulting messages.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated June 6, 2021.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated June 6, 2021, is cancelled.

The tenancy will continue until ended in accordance with 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: October 13, 2021

Residential Tenancy Branch