



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arbutus Lane Properties Ltd. and [tenant
name suppressed to protect privacy]

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 August 11, 2021 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 02, 2021 (the “Notice”).

The Tenant appeared at the hearing. The Agent for the Landlord (the “Agent”) 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.

Preliminary Issue – Z.A.

Z.A. was originally named on the Application as a tenant. The Agent for the Landlord disputed that Z.A. is a tenant and submitted that they are an occupant. The Tenant submitted that Z.A. is a tenant of the rental unit.

The tenancy agreement in evidence does not name Z.A. The Tenant relied on two sets of documents to show that Z.A. is a tenant, an agreement to withdraw a previous RTB file and receipts from the previous landlord. In relation to the “Agreement to Withdraw” in evidence, it states that the Landlord recognizes Z.A. “as an authorized occupant of the rental unit.” The “Agreement to Withdraw” does not support that Z.A. is a tenant and in fact supports that Z.A. is an occupant. Receipts from the previous landlord are not before me. In the circumstances, I find Z.A. is an occupant and have removed Z.A. from the Application which is reflected in the style of cause.

Preliminary Issue – Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package and some of the Tenant's evidence. The Agent testified that a further package of evidence from the Tenant was received December 14, 2021 and they have not had time to review it.

The Tenant confirmed receipt of the Landlord's evidence on December 05, 2021. The Tenant uploaded further evidence December 09, 2021 and December 14, 2021 to the RTB website. The Tenant confirmed this further evidence was sent to the Landlord by UPS December 09, 2021 and provided in person December 14, 2021.

Pursuant to rule 3.14 of the Rules, the Tenant was required to serve their evidence on the Landlord not less than 14 days before the hearing.

Pursuant to rule 3.15 of the Rules, the Landlord was required to serve their evidence on the Tenant not less than seven days before the hearing.

I find the Landlord complied with rule 3.15 of the Rules in relation to their evidence.

I find the Tenant did not comply with rule 3.14 of the Rules in relation to their further evidence uploaded December 09, 2021 and December 14, 2021. Pursuant to rule 3.17 of the Rules, I excluded the further evidence uploaded December 09, 2021 and December 14, 2021 as I found it would be unfair to the Landlord to consider evidence they have not had a chance to review. I have considered the "Agreement to Withdraw" which was uploaded December 14, 2021 because the Agent had signed this document and referred to it during the hearing and therefore, I am satisfied the Agent was aware of it and could respond to it.

I explained to the Tenant that they could provide whatever testimony they wished at the hearing despite the documentary evidence uploaded December 09, 2021 and December 14, 2021 being excluded.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible 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 in evidence and the parties agreed it is accurate and the only written tenancy agreement relating to this tenancy. The tenancy started July 01, 2008. The parties agreed rent is currently \$800.00 per month due on the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of September 30, 2021. The grounds for the Notice are repeated late payment of rent in August 2020, March 2021, June 2021 and August 2021. The Tenant did not take issue with the form or content of the Notice when asked.

The parties agreed the Notice was served, and received by the Tenant, in person August 02, 2021.

I did not consider the late rent payment in August of 2020.

The Agent confirmed the Tenant paid rent late March 2021, June 2021 and August 2021.

In relation to the March 2021 rent payment, the Tenant testified that they mailed a cheque to the Landlord February 27, 2021 and were told it would be delivered by March 01, 2021; however, it was not. The Tenant could not point to documentary evidence showing that it was confirmed that the cheque would be delivered by March 01, 2021. The Tenant testified that it was verbally confirmed that the cheque would be delivered by March 01, 2021. The Tenant pointed to the Canada Post website print out showing that late delivery should be expected due to the pandemic.

In relation to the June 2021 rent payment, the Tenant testified that they sent it to the Landlord without the amount written in the box on the cheque. The Tenant testified that they wrote in the cheque amount but did not write out the amount in numbers.

In relation to the August 2021 rent payment, the Tenant testified that they sent it to the Landlord by mail July 19, 2021 and the Landlord notified them it had not been received on August 02, 2021. The Tenant testified that they do not know what happened to the payment. The Tenant submitted a photo of their August rent cheque beside an envelope addressed to the Landlord. The Tenant submitted two receipts, one showing purchase of a "MoneyGram" and one showing a purchase of \$401.34. The Tenant submitted that these receipts show that they mailed the rent payment to the Landlord July 19, 2021.

In reply, the Agent submitted that the Tenant never sent a cheque in August of 2021.

The Agent sought an Order of Possession effective January 31, 2022.

The Landlord submitted documentary evidence including 10 Day Notices issued to the Tenant March 02, 2021, June 02, 2021 and August 02, 2021. The Landlord also submitted letters to the Tenant about late rent payments.

The Tenant submitted documentary evidence and written submissions about the late rent payments in March 2021, June 2021 and August 2021. The Tenant submitted emails in which they note re-sending the August 2021 rent payment on August 05, 2021 and ask to pay rent in another manner on August 18, 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. (emphasis added)

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy if a tenant is repeatedly late paying rent. A tenant may dispute a notice to end tenancy issued pursuant to

section 47 of the *Act* within 10 days of receiving the notice pursuant to section 47(4) of the *Act*.

There is no issue that the Notice was served, and received by the Tenant, August 02, 2021. The Application was filed August 11, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

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

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.

(emphasis added)

There is no issue that the Tenant paid rent late in March 2021, June 2021 and August 2021, three times in six months. I do not find that the late rent payments are far apart because they all occurred within six months which is a relatively short period of time. I find the Landlord did act in a timely manner after the most recent late rent payment because the Landlord issued the Notice August 02, 2021, immediately after the third late rent payment. I find the Landlord has proven the grounds for the Notice.

The Tenant seeks to justify the late rent payments and therefore I find the Tenant is asking me to consider the reason for the late rent payments. As stated in Policy Guideline 38, the reason for late rent payments may be considered in exceptional circumstances. The example noted in Policy Guideline 38 is an unforeseen bank error. I find that the Policy Guideline contemplates a circumstance that is both unforeseen and outside of the Tenant's control.

I am not satisfied based on the evidence submitted that the reasons provided by the Tenant for the late rent payments were unforeseen and outside of the Tenant's control.

In relation to the March 2021 late rent payment, I am not satisfied the Tenant confirmed it would be delivered to the Landlord by March 01, 2021 because the Tenant has not provided documentary evidence showing this. Further, it was within the Tenant's control when they mailed the rent cheque to the Landlord and the Tenant could have chosen to send it well before February 27, 2021 which only allowed for two days for the mail to be delivered. As well, late delivery of mail was not an unforeseen circumstance because it was specifically stated on the Canada Post website that delays should be expected given the pandemic.

In relation to the June 2021 late rent payment, this resulted from the Tenant not completing the cheque properly, something that was within the Tenant's control. Further, it was foreseeable that the cheque could not be cashed given it was not completed properly.

In relation to the August 2021 late rent payment, I am not satisfied based on the evidence provided that the Tenant mailed the cheque July 19, 2021 because none of the documentary evidence supports this. A photo of the cheque and an envelope addressed to the Landlord does not show that the Tenant mailed the cheque to the Landlord July 19, 2021 or that it got lost in the mail. The receipts submitted do not show that the Tenant sent mail July 19, 2021. In relation to the Pharmasave receipt, it does not show what was purchased and does not show that the cost noted relates to the rent cheque or mailing the rent cheque. Further, the method by which the Tenant paid rent was within the Tenant's control and it was the Tenant who chose to mail the rent cheque by regular mail without a tracking number despite the Tenant already having made two late rent payments.

Given the above, I am satisfied the Tenant paid rent late three times within six months and I am not satisfied the Tenant has proven exceptional circumstances. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given the above, I uphold the Notice and dismiss the Tenant's dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires an arbitrator to issue a 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 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 January 31, 2022.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on January 31, 2022. 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: December 17, 2021

Residential Tenancy Branch