



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, OLC, FFT

Introduction

On October 6, 2021, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and to cancel a One Month Notice to End Tenancy for Cause. The Tenant also applied for an order for the Landlord to make repairs to the rental unit and for the Landlord to comply with the Act, Regulations, or tenancy agreement.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The Landlord's evidence was confirmed received by the Tenant. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

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 permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or the One Month Notice to End Tenancy for Cause. The Tenant's other claims are dismissed.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- a) be signed and dated by the landlord or tenant giving the notice,*
- b) give the address of the rental unit,*
- c) state the effective date of the notice,*
- d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- e) when given by a landlord, be in the approved form.*

The Tenant and the Landlord did not provide full copies of any notices to end tenancy that were served. A proper copy of the One Month Notice is required in accordance with section 52 of the Act. The Landlord was provided an opportunity to provide a copy of a One Month Notice to End Tenancy for Cause and tenancy agreement after the completion of the hearing. The Landlord provided the One Month Notice and tenancy agreement on December 9, 2021.

The Landlord displayed challenging behaviour throughout the hearing, for example, despite providing the parties with a detailed explanation that I found that Tenant had disputed the One Month Notice on time, the Landlord challenged whether my finding is factual. I again had to explain the dispute process to the Landlord, and it appeared he was not satisfied. The Landlord also resisted my direction to provide direct testimony detailing his reasons why the tenancy should end, as he suggested I just rely on what he felt was his sufficient documentary evidence. The Landlord was informed that his direct testimony was required. After informing the Landlord that I was not giving him an opportunity to provide late evidence other than a copy of the One Month Notice and tenancy agreement, he pressed the issue seeking to provide additional evidence following the hearing. At the end of the hearing, the Landlord wanted yet another

opportunity to make submissions and I found that he was simply repeating earlier testimony and the hearing was ended.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy based on the One Month Notice to End Tenancy for Cause?
- Is the tenancy ending based on unpaid rent due under the tenancy agreement?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2019 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 a security deposit of \$350.00 to the Landlord. The Landlord and Tenant testified that the tenancy agreement is in writing; however, neither party provided a copy to the RTB. Prior to the hearing.

One Month Notice to End Tenancy for Cause

The Landlord testified that they served a One Month Notice to End Tenancy for Cause dated September 26, 2021 ("the One Month Notice") to the Tenant in person on September 26, 2021. The One Month Notice has an effective date (the date the Tenant must move out) of October 31, 2021.

The Landlord stated that the reason cited for ending the tenancy within the One Month Notice:

- *Tenant is repeatedly late paying rent*

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 within the required time period on October 6, 2021 by paying the filing fee to dispute the Notice. The Notice of Dispute Resolution Proceeding paperwork was prepared on October 13, 2021 for the Tenant to serve on the Landlord.

With respect to repeated late payment of rent, the Landlord testified that the Tenant has been late paying the rent on numerous previous occasions and that recently she has been late paying the rent on four occasions.

The Landlord testified that the rent was paid late on July 2, 2021; August 22, 2021; September 9, 2021; and October 2, 2021. The Landlord testified that the rent was paid using e-transfer. The Landlord referred to two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities provided in his documentary evidence showing that the Tenant paid the rent late in September and October.

The Landlord stated that he has previously spoken to the Tenant about late payment of rent, telling her that the rent needs to be paid on time.

In reply, the Tenant acknowledged that the rent was paid late on the four recent occasions mentioned by the Landlord. She testified that there was a verbal agreement between her and the Landlord permitting her to pay the rent late. She stated that she would pay half a month in the beginning and the other half later.

The Tenant testified that she has now changed jobs and will pay the rent when it is due.

In reply, the Landlord testified that he absolutely denies that there was an oral agreement permitting the Tenant to pay the rent late.

10 Day Notice to End Tenancy for Unpaid Rent or Utilities

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 9, 2021 and was served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2021. The Landlord testified that the Tenant paid the rent owing within five days of receiving both 10 Day Notices.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

The Residential Tenancy Policy Guideline #38 with respect to repeated late payment of rent sets out that three late payments are the minimum number sufficient to justify a notice to end tenancy.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find the tenancy agreement provides that the rent is due to be paid to the Landlord on or before the first day of each month.

I find that the Tenant was late paying the rent on four recent occasions. While the Tenant submits that there was a verbal agreement permitting her to pay the rent late or in installments, the Landlord denies there was a verbal agreement. The Tenant has provided no documentary evidence to support her testimony. The Landlord provided a copy of the tenancy agreement confirming the testimony that rent was due on or before the first day of the month. I find that there is insufficient evidence from the Tenant to support her testimony that the Landlord permitted her to pay the rent late.

The tenancy is ending due to repeated late payment of rent. The Tenant's application to cancel the One Month Notice is dismissed.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the One Month Notice complies with the requirements for form and content, and I grant the Landlord an order of possession effective December 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Conclusion

The Tenant paid the rent late on four occasions within the last six months. The tenancy is ending due to repeated late payment of rent. The Tenant's application to cancel the One Month Notice is dismissed.

The Landlord is granted an order of possession effective December 31, 2021, after service on the Tenant.

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: December 13, 2021

Residential Tenancy Branch