



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice").

Both parties appeared and were assisted at the hearing. The parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

As for service, the tenant was uncertain as to service of the proceeding package upon the landlord. The landlord confirmed she received the proceeding package by way of an email the tenant sent to her on August 23, 2021.

The tenant stated he did not serve the landlord with any evidence. The landlord confirmed that to be accurate. As such, I instructed the tenant to provide his submissions and evidence orally during the hearing.

The landlord testified that she served her evidence to the tenant by way of an email sent on November 29, 2021. The tenant confirmed receipt of the landlord's email and I admitted the landlord's materials into evidence.

The landlord pointed out that the tenant indicated he was disputing a 10 Day Notice to End Tenancy for Unpaid Rent on the Application for Dispute Resolution; but, the landlord had issued the tenant a One Month Notice to End Tenancy for Cause. The landlord confirmed that she understood and had prepared to make submissions concerning the One Month Notice. Accordingly, I amended the tenant's Application for Dispute Resolution to reflect the correct type of notice he was seeking to cancel.

The Application for Dispute Resolution was also amended to correctly spell the landlord's last name.

Issue(s) to be Decided

1. Should the One Month Notice to End Tenancy for Cause dated July 29, 2021 be upheld or cancelled?
2. If the One Month Notice is upheld, is the landlord entitled to an Order of Possession and if so, when should the One Month Notice be effective?

Background and Evidence

The parties executed a written tenancy agreement for a one year fixed term tenancy set to commence on July 29, 2020 and expire on July 31, 2021. The tenant paid a security deposit of \$965.00 and the monthly rent of \$1930.00 is payable on the first day of every month.

On July 28, 2021 the landlord posted the subject One Month Notice to End Tenancy for Cause ("One Month Notice") on the door of the rental unit. The One Month Notice has a stated effective date of September 1, 2021 and indicates the reason for ending the tenancy is because the "*tenant is repeatedly late paying rent*". in the Details of Cause, the landlord provided the following details:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The tenant paid all September,2020 rent on Sep 4, 2020.
The tenant paid all October,2020 rent on Oct 16, 2020.
The tenant paid all November,2020 rent on November 3, 2020.
The tenant paid all December,2020 rent on December 31, 2020.
The tenant paid all January,2021 rent on January 27,2021.
The tenant paid all February,2021 rent on February 25,2021.
The tenant paid all March,2021 rent on March 4,2021.
The tenant paid all April,2021 rent on April 07,2021.
The tenant paid all May,2021 rent on May 18,2021.
The tenant paid all June,2021 rent on June 22,2021.
The tenant paid all July,2021 rent on July 8,2021.

The landlord submitted the first month of tenancy (August 2020) the tenant paid rent in full and on time; however, every month thereafter was paid by way of partial payments and the full month's payment was received after the first day of the month. The dates appearing in the Details of Cause section of the One Month Notice represents the date the final installment was received.

The landlord provided a spread sheet showing the months of tenancy and dates all of the e-transfer payments were received.

Landlord's position

The landlord submitted that the tenant was late paying rent every month, except August 2020, and the tenant promised to pay the rent on time several times but he did not keep his promises.

In June 2021 the landlord approached the tenant about entering into a new agreement that included a term that provided if the tenant was late paying rent, he would move out in one month. The tenant was not agreeable to such an agreement.

The tenant paid rent late for July 2021 and on July 28, 2021 the landlord issued the One Month Notice.

After serving the One Month Notice the tenant disputed the One Month Notice and he paid rent on time for August 2021 and September 2021 but then he was late for the months of October 2021, November 2021, and December 2021.

The landlord recognizes that the tenant has suffered financial difficulties but the landlord is also a tenant and she has had to make sure she pays her rent on time despite her circumstances. The landlord cannot continue like this and she seeks to end the tenancy.

The landlord requested an Order of Possession effective December 31, 2021 in recognition the tenant paid rent for December 2021. The landlord indicated she is open to giving the tenant more time to move out if he requires it and presents payment for the subsequent month.

Tenant's position

The tenant acknowledged that he paid rent late on several occasions but he pointed out that some months were paid on time.

The tenant pointed out that all the rent has been satisfied and there is no outstanding rent owing to the landlord. Although the tenant paid rent late on several occasions, he

did eventually satisfy all of the outstanding rent and it would be unfair to end the tenancy when all of the rent has been paid.

The tenant explained that he suffered financial difficulties because he suffered loss of employment income due to the Covid-19 pandemic. As a result, he proceeded to find temporary work in order and he did his best to pay the rent as soon as he could.

The tenant is of the view the landlord issued the One Month Notice because he refused to sign the new tenancy agreement presented to him in June 2021 and after he spoke with an Information Officer with the Residential tenancy Branch where he learned the term was illegal.

The tenant also pointed out that rents for similar units have likely increased and he is a single father.

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 indicated on the notice.

Upon review of the One Month Notice, I am satisfied it is in the approved form and it was duly completed.

I proceed to consider whether the landlord has cause to end the tenancy.

Section 47 of the Residential Tenancy Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Residential Tenancy Policy Guideline 38: *Repeated Late Payment of Rent* provides policy statements and information concerning ending a tenancy for repeated late payment of rent. The policy guideline provides, 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.

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.

The parties agreed when the tenancy commenced that the tenant would pay \$1930.00 on or before the first day of every month and the landlord is entitled to receive the payment on time. Based on the oral testimony of both parties and the documentary evidence of the landlord, I find it to be undeniable that the tenant was late paying rent well over three times over a relatively short period of time.

Upon review of the text messages exchanged between the parties, I find it is clear the landlord had asked the tenant to pay the rent or asked when the rent payment would be made several times. The tenant also made promises to the landlord in December 2020 and January 2021 that he would pay rent on time going forward including his acknowledgement that rent is due on the first day of each month in January 2021. As such, I find tenant was aware of his obligation to pay rent in full by the first of every month and the landlord did not act in such a way as to waive entitlement to receive rent on time or is otherwise estopped from requiring rent to be paid on the first.

Despite making promises to the landlord to pay on time in December 2020 and January 2021 text messages, upon review of the landlord’s spreadsheet and the Details of Cause on the One Month Notice, it is clear the tenant failed to meet his promises on which the landlord was relying and the tenant paid rent late for the months of February 2021 through July 2021.

Although the landlord communicated to the tenant in June 2020 that she would not renew the tenancy agreement the tenant exercised his right to continue the tenancy on a month to month basis. The landlord then presented a new agreement to the tenant to continue the tenancy in June 2020 with a condition the tenant pay on time or move out.

Although such a term is non-compliant with the Act and unenforceable, the tenant did not agree or rely upon that agreement. Rather, he determined the term was non-compliant, refused to agree to the term, and notified the landlord of such.

I find the landlord actions in trying to end the tenancy at the end of the fixed term and presenting the new tenancy agreement to the tenant were motivated by the tenant's repeated late payment of rent. The tenant implied the landlord may be motivated to increase the rent; however, I was not presented any evidence to suggest the landlord attempt to increase the rent in presenting the tenant a new tenancy agreement in June 2021.

Despite the landlord's communications to the tenant concerning late payment of rent, the tenant still paid rent late for July 2021 and I find the landlords reaction to issue the One Month Notice is not unexpected and I find I am satisfied the landlord had a basis for doing so due to repeated late payment of rent.

The tenant argued that it is not fair to end the tenancy since he has eventually satisfied all of the rent. However, I find the eventual payment of the rent is not a basis to cancel the One Month Notice as the Act provides a landlord the ability to end the tenancy for repeated late payment of rent by way of a One Month Notice to End Tenancy for Cause and for non-payment of rent by way of a 10 Day Notice to End Tenancy for Cause. The landlord in this case is not seeking to end the tenancy for unpaid rent. Rather, the landlord is seeking to end the tenancy for repeated late payment of rent and it is the landlords right to do so even if the rent was eventually paid.

The tenant pointed to loss of income due to the Covid-19 pandemic as being the reason for paying rent late; however, only rent payable between March 18, 2020 and August 17, 2020 ("affected rent") was exempt from being considered late due to the Covid-19 pandemic under the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"). All of the late payments before me occurred from September 2020 onwards and are not exempt from being counted as being late under the C19 Tenancy Regulation. As such, I find the tenant's submissions concerning inability to pay on time due to the Covid-19 pandemic to be irrelevant.

In light of the above, I uphold the One Month Notice and I order the tenancy to be at an end effective December 31, 2021.

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 upheld the 1 Month Notice and upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Provided to the landlord is an Order of Possession effective at 1:00 p.m. on December 31, 2021.

Conclusion

The 1 Month Notice is upheld and the tenant's application is dismissed.

The tenancy ends effective December 31, 2021 and with this decision the landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2021.

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 10, 2021

Residential Tenancy Branch