



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord's One Month Notice dated November 9, 2021 states it was served on the Tenants by placing the notice in the Tenants' mailbox. The Notice of Dispute Resolution Proceeding document states the Tenants did receive the One Month Notice on November 9, 2021 from their mailbox. I find that the One Month Notice was deemed sufficiently served on the Tenants on November 12, 2021 pursuant to Sections 71(2)(b) and 90(d) of the Act.

The Notice of Dispute Resolution Proceeding package for this hearing was issued to the Tenants on November 16, 2021 (the “NoDRP package”). Only the Landlord attended this hearing. This matter was not canvassed at the hearing, and the Landlord refused to attend a reconvened hearing to clarify this matter. The Landlord did not call into the RTB for hearing call-in details, so I find that the Landlord was sufficiently served with the NoDRP package on November 19, 2021 in accordance with Section 71(2)(b) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this oral periodic tenancy began about one or two years ago. Monthly rent was \$1,000.00 payable on the first day of each month. A security deposit of \$500.00, and pet damage deposit of \$250.00 were collected at the start of the tenancy and are still held by the Landlord.

At the outset of the hearing, the Landlord testified that the Tenants vacated the rental unit on December 12, 2021 and he does not require an Order of Possession.

The Landlord did not apply for any Monetary Award for unpaid rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed.

Section 47 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(b) the tenant is repeatedly late paying rent;

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

(5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Landlord's One Month Notice was deemed served on November 12, 2021. The Tenants applied for dispute resolution on November 12, 2021 within the 10 days after receiving the One Month Notice. I find the One Month Notice submitted into documentary evidence complies with Section 52 of the Act.

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. It states:

...

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 Landlord testified that the Tenants were often late paying their rent. Based on the undisputed testimony of the Landlord, I find that the Tenants were late paying their rent, and in the absence of testimony from the Tenants, I find that the Landlord has proven cause, on a balance of probabilities, for his One Month Notice and I uphold the notice. The Tenants’ application is dismissed without leave to re-apply.

As the Tenants’ have vacated the rental unit, the Landlord is not seeking an Order of Possession.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

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: February 18, 2022

Residential Tenancy Branch