



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on December 26, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Their Landlord issued this One-Month Notice on December 16, 2021. The Tenant also seeks reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 4, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. Each party confirmed they received the prepared evidence of the other in advance of this hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice issued by the Landlord on August 10, 2021?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant presented a copy of the tenancy agreement. The Tenant moved into the property in October 2017. With an ownership change in mid-2020, there was the need for another signed tenancy agreement. Both parties in the hearing acknowledged the Tenant had signed a copy of the agreement and returned it to the Landlord in June

2020. The rent amount was listed as \$860. The agreement provided that the rent was due on the 1st day of each month.

The Landlord issued the One-Month Notice on December 15, 2021 for the end-of-tenancy date of January 31, 2022. They indicated that “Tenant is repeatedly late paying rent.” on page 2 of the document.

In the details section the Landlord noted late rental payment for: July 2, 2021, August 2, 2021, and December 2, 2021. They wrote: “Rent is due no later than midnight of the 1st of each month. NO EXCEPTIONS.”

The Landlord presented records of the Tenant’s rent deposits for these months. They show the bank deposits registered for each of these months on the 2nd calendar day of each month with the exception of August on the 3rd due to a bank holiday.

The Landlord also submitted a copy of their “rent reminder list” for the rental unit. This shows a friendly reminder sent for December 2020 through to June 2021. The notation on the document for June shows “was informed in person a couple hours later those reminders were not needed by [the Tenant].” More detail is given for each month the Tenant paid late. These are: Tenant out of town camping in July and August; and Tenant ill on December 1, 2021. For each note, the Landlord added that “if [the Tenant] had informed [the Landlord] that [they were] . . . not . . . able to send rent on time [the Tenant] would not have been marked as late payment due to letting [the Landlord] know ahead of time that [they] may be late on rent.”

In the hearing, the Landlord advised they served the One-Month Notice on the basis of three late rent payments within the single year timeframe. The Landlord was of the understanding that electronic payments can be scheduled through a person’s banking institution; that would prevent late rent payments. The Landlord felt they didn’t need to inform the Tenant as a warning that late payments were accumulating toward a minimum of three late rent payments.

The Tenant provided the following documents:

- a text message from the Landlord dated August 2, 2020 at 11:00am, stating “Hey! Are you able to send rent today?” The Tenant responded: “It’s done” to which the Landlord responded: “No worries! Thank you!”
- an undated note from the Landlord directly to the Tenant, stating their apology for serving the One-Month Notice;

- an email from the Landlord dated December 16 at 12:00am, though it referred to “today” as December 15, the date of the One-Month Notice. This set out two options: one, to stay in the rental unit “with a rent increase to \$1200.00 per month”; two, “to be served with an eviction notice.” The Landlord set out that the Tenant had an extended deadline in order to decide; however, with no answer, the Landlord noted they issued the One-Month Notice on December 15, 2021. They provided the Tenant the extra opportunity to accept the rent increase offer until December 20; this would cancel the eviction.
- a statement from a friend who sent the rent on August 2, 2021 on the Tenant’s behalf.

In the hearing, the Tenant provided that these payments were “minimally late”; however, they don’t deny they were late. They received no warning from the Landlord to indicate that consecutive late payments would count toward an eventual end-of-tenancy notice. They were “never told it was a huge incident.” There were also no additional fees for late rent payments. They cited the Landlord’s message from August 2 stating “no worries”: this created the further impression that the mishap was forgiven.

The Tenant speculated that they did not receive a warning because of the Landlord wanting more rent. On December 2, the Landlord informed them in person that they could sign a new tenancy agreement for \$1,200 per month rent, or for the Landlord there would be “nasty paperwork to prepare.” The Tenant stated their understanding that a new tenancy agreement could legally be in place with consent between the parties; however, in this situation with an eviction “it feels forced.”

Analysis

The *Act* s. 47 provides that a landlord may end a tenancy by giving a One-Month Notice to end the tenancy if a tenant is repeatedly late paying rent.

In this matter, the Landlord has the onus to prove that the reason indicated for ending the tenancy is valid and sufficient. Based on the evidence before me, I find the evidence shows the Landlord’s reason is not valid.

There is no record of the Landlord giving the Tenant information that continued late rent payments form the basis for ending the tenancy. The Tenant was not aware of the guideline about three late payments within one year providing grounds for ending the tenancy. The Tenant received the message “no worries” after apologizing for the

August 2 late payment. With this type of messaging, I find the Tenant was not aware of the ramifications.

I find this is not a sustained pattern of neglect by the Tenant. Each month in question had the Tenant immediately acting to fulfill completion of the rent payment. There were no excuses or other reasons proffered by the Tenant on why they could not make payments. This is not a situation where the Tenant is weeks or even days behind on the rent. I am satisfied the instances of late payment were rectified immediately.

The Landlord mentioned that if the Tenant had informed them of a late payment, it would not have been counted as such. I find the Tenant was not aware of that need, and the Landlord did not convey that message at any time to the Tenant. This information contrasts with the “no exceptions” message written on the One-Month Notice; evidently, there are exceptions where the Landlord is notified.

Other than these reasons, I find this issue is not the Landlord wanting to evict the Tenant for late payments; rather, I find it is a method utilized by the Landlord to ensure the Tenant would agree to pay a substantially higher rent. That is plainly evident in the Landlord’s December 16 email to the Tenant where they stated an eviction notice was an *option* for the Tenant. The Landlord portrayed this as extending the offer twice which leads me to question whether the intent of ending the tenancy on the basis of late rent was true and in good faith.

For these reasons, I find the One-Month Notice is not valid. The Tenant provided evidence that outweighs that of the Landlord on the reasons for its issuance. Because the Tenant was successful in their Application, I find they are entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the above reasons, I order that the One-Month Notice issued by the Landlord on December 15, 2021 is cancelled and of no force or effect. The tenancy shall continue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 7, 2022