



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy, and for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

LANDLORD'S TESTIMONY:

The landlord testified that this month-to-month tenancy began on August 1, 2020 and a tenancy agreement has been provided for this hearing, for rent in the amount of \$900.00 per month. On October 2, 2020 the parties signed an Addendum to the tenancy agreement for a different apartment in the rental complex for rent in the amount of \$1,000.00 commencing November 1, 2020. At the outset of the tenancy the landlord

collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no additional security deposit was paid when the Addendum was signed, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 146 units.

On October 1, 2021 the landlord's agent served the tenant personally with a One Month Notice to End Tenancy for Cause and a copy has been provided by the landlord for this hearing. It is dated October 1, 2021 and contains an effective date of vacancy of November 30, 2021. The reason for issuing it states: Tenant is repeatedly late paying rent.

A tenant ledger has also been provided for this hearing, and the landlord's agent testified that the tenant is currently in arrears of rent the sum of \$5,100.00.

The landlord's agent also personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 5, 2021 and a copy has been provided for this hearing. It is dated November 5, 2021 and contains an effective date of vacancy of November 25, 2021 for unpaid rent in the amount of \$4,100.00 that was due on November 1, 2021. The tenant did not pay the outstanding rent and did not serve the landlord with a Notice of Dispute Resolution disputing the 10 Day Notice.

The landlord's agent approached the landlord company about the tenant getting back on track with the rent. However, a Letter of Intent was not given by the tenant, and in short, the tenant did not qualify for the support assistance. Several attempts were made by the landlord to initiate a process including subsidy programs.

TENANT'S TESTIMONY:

The tenant testified that the tenant did not understand the Notice to end the tenancy about how much time the tenant had to dispute it.

The tenant has nowhere else to go, and testified that the tenant's Case Manager is looking to get the tenant into an assisted living accommodation, because MS is getting worse and the tenant is in a wheelchair.

The tenant agrees that there were late payments of rent, and testified that the tenant had to change banks. The tenant went to the TD bank and sat for 3 hours with the banker and found out there were hackers who hacked the tenant's account. The tenant changed to

Scotiabank and the landlord has been getting the rent payments. An investigation is ongoing about the hacking.

Analysis

Firstly, I accept that the tenant did not understand that the tenant's application to dispute a notice to end the tenancy had to be made within 10 days of receiving the One Month Notice to End Tenancy for Cause, due to the health issues of the tenant. Therefore, I grant more time than prescribed to dispute it.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause dated October 1, 2021, and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the tenant ledger, and I find that the tenant has been repeatedly late paying rent for the months of August, 2021 through December, 2021. A minimum of 3 late payments is required to justify ending a tenancy for repeated late rent, and I find that the landlord has established that.

The tenant testified that hacking to her bank account had occurred and an investigation is ongoing. However, there is no evidence to support that, and no evidence or testimony with respect to when that might have happened, or for which months that may have applied to late rent. Therefore, I dismiss the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

The *Act* also specifies that where I dismiss a tenant's application to cancel such a notice, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days' notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days' notice to the tenant.

This order is final and binding and may be enforced.

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: February 26, 2022

Residential Tenancy Branch