



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and the landlord was accompanied by the landlord's spouse, who was also identified as a co-landlord. The landlord and the tenant each gave affirmed testimony and the tenant called 1 witness who also gave affirmed testimony.

The parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised by the parties. However, during the hearing, I was not able to open the uploaded evidence, and advised the parties that a Decision would not be sent to the parties until I was able to see the evidence provided. I have now been able to open the uploaded evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated October 20, 2021 was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

LANDLORD'S TESTIMONY:

The landlord testified that this fixed-term tenancy began on March 1, 2020 and reverted to a month-to-month tenancy after September 1, 2020, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite above the landlord's garage, and the landlord and spouse also reside on the property. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on October 20, 2021 the landlord's spouse posted to the door of the rental unit a One Month Notice to End Tenancy for Cause (the Notice), which was witnessed by the landlord. A copy of the Notice has been provided for this hearing and it is dated October 20, 2021 and contains an effective date of vacancy of November 30, 2021. The reason for issuing it states: Tenant is repeatedly late paying rent.

The tenant paid rent late on the following dates: January 5, 2021; February 2, 2021; March 2, 2021; August 4, 2021 and October 3, 2021. The first time, the tenant texted the landlord stating that EI payments to the tenant caused rent to be late. The landlord told the tenant that it was okay, knowing that the tenant was going through some financial difficulties. In February, 2021 the tenant said that the tenant was sorry and that an e-transfer would be sent "first thing." In March, 2021 the tenant texted again saying that EI wouldn't change the date of deposits, and the landlord replied again trying to be friendly.

Rent for April to July, 2021 were paid on time, but on August 1, 2021 the landlord received another text from the tenant saying that rent would be transferred. September's rent was paid on time, however on October 3, 2021 the tenant texted the landlord saying that the tenant had the rent in cash.

Rent is usually paid by e-transfer, but the tenant has paid in cash on a few occasions. The landlord saw no point in issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the landlords were not okay with late rent payments and did not consent to rent being paid late; 5 out of 10 rent payments were made late. The parties have a contract and rent is to be paid on time, and the landlords did not believe that a reminder

to pay rent on time was required. There is nothing in the Residential Tenancy Policy Guidelines or in the *Residential Tenancy Act* stating that a landlord has to give a warning. The landlords were planning to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in October, 2021, but the tenant texted the landlords prior to posting the Notice to the door of the rental unit.

TENANT'S TESTIMONY:

The tenant testified that the landlords have never given prior warning or notice, such as a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that the late payment of rent would result in eviction. The tenant referred to Supreme Court of British Columbia case law indicating that the eviction was overturned because the Arbitrator failed to consider that the behaviour by the landlord was condoned as a result of not notifying the tenant that late payments of rent would result in eviction. A copy of the case law was not provided for this hearing; the tenant testified that by the time it was located the time for uploading evidence had expired.

The tenant further testified that for January, February and March, 2021 there were no issues raised by the landlord. On August 1, 2021 the landlord who rent was usually paid to wasn't home. The tenant texted saying that the rent would be e-transferred on the 3rd, but by August 2, the landlord replied that the other landlord was home. The tenant thought there was some leeway because 3 times previously no notice was given about ending the tenancy. It must be clear that failure to pay rent on time would result in a notice to end the tenancy.

In mid-September the tenant tried to get the landlord to have a conversation about issues with the tenancy but the landlord didn't show up.

Rent was late for October, but it was paid and there's nothing in the tenancy agreement stating that if late, a notice to end the tenancy would be given. When the tenant arrived, no one was home, and the rent was paid in cash on October 3.

On October 19, 2021 the tenant sent a letter to the landlords about quiet enjoyment, and 2 days later the One Month Notice to End Tenancy for Cause was placed on the door of the rental unit. It took until after that was given to not condone the late pmts. The tenant has never been given prior notice that eviction was an issue.

The tenant was considering ending the tenancy but there is no where to rent.

The tenant's witness testified that the witness has never seen any notices from the landlord except text messages.

The witness is aware of attempts made by the tenant to get the landlord to have a discussion due to the tenant's quiet enjoyment being disturbed. The tenant considered moving out due to unreasonable disturbances and on-going noise in the gym in the garage.

SUBMISSIONS OF THE LANDLORDS:

The landlords submit that the tenant's testimony about noise is untrue, and this hearing deals with the late payment of rent, not noise.

The tenant admits that rent was late 5 times in 10 months. The landlords were okay with it for the first few times because the *Act* says 3 late payments are required for it to be considered repeated. Nothing in the tenancy agreement says that a landlord has to give prior warning. If the *Residential Tenancy Act* or Policy Guidelines said that a landlord had to give prior warning, the landlords would have done so, but the landlords never consented to late rent.

SUBMISSIONS OF THE TENANT:

Even though rent was late in January, February and March, the landlords accepted late payments and was flexible in the text messages. The landlords never said repeated late rent could result in eviction or serious consequence. There were no prior notices or letters given, but 2 days after the tenant delivered the letter regarding loss of quiet enjoyment, the landlords served a notice to end the tenancy for repeated late rent.

Analysis

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 Unpaid Rent or Utilities (the Notice) and I find that it is in the approved for and contains information required by the *Act*. The reason for issuing it is in dispute.

The tenant's position is that due to the landlord's failure to notify the tenant that repeated late rent would not be tolerated, or would have consequences, such as ending the tenancy, case law states that such a failure amounts to condoning the late payment

of rent. The tenant has not provided a copy of the case and the circumstances around that particular case are unknown. Therefore, I don't find the testimony of the tenant with respect to that case particularly helpful.

I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, which states, 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 this case, the landlord did not fail to act in a timely manner after the most recent rent payment, and therefore, I do not determine that the landlord has waived reliance.

The tenancy agreement specifies that rent is due on the 1st day of each month. It also states: “The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a *10 Day Notice to End Tenancy* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.”

The *Residential Tenancy Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Three late payments are the minimum to justify repeated late rent. The tenant does not dispute that rent has been paid late on more than 3 occasions, but on 5 occasions. Regardless of what case law the tenant has located, the tenancy agreement and the *Residential Tenancy Act* and the Policy Guideline deal with late payment of rent, and none speak to warnings being required. The tenancy agreement states that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but

does not indicate that the landlord may not issue a One Month Notice to End Tenancy for Cause for repeated late rent.

Therefore, I find that the tenant has been repeatedly late paying rent, and I dismiss the tenant's application to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, 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.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reason set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: March 08, 2022

Residential Tenancy Branch