



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC, MNDCT, FFT
Landlord: OPC, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenant applied on October 22, 2021 for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated October 14, 2021 (the October One Month Notice);
- compensation for monetary loss or other money owed; and
- the filing fee.

The Tenant amended her application on December 3, 2021 to apply for:

- an order to cancel a second One Month Notice for Cause, dated November 22, 2021 (the November One Month Notice).

The Landlord applied on October 26, 2021 for:

- an order of possession, having issued the October One Month Notice; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the Landlord by registered mail on October 26, 2021, and the Landlord confirmed she received it. The Tenant testified she served her December 3,

2021 amendment on the Landlord by registered mail on December 14, 2021, and the Landlord confirmed she received it. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified she served her responsive evidence on the Tenant by putting it in the mailbox on February 28, 2022. The Tenant testified that, on March 2, 2022, she received the following evidence from the Landlord:

- screenshots of rent transfers received by the Landlord on February 2, 2021; March 2, 2021; April 2, 2021; June 3, 2021; July 5, 2021; August 2, 2021; and
- a screenshot of an Account Details page showing a \$100.00 e-transfer transaction on February 26, 2022.

I find the Landlord served the above-noted evidence on the Tenant in accordance with section 88 of the Act.

Additional evidence was submitted to the Residential Tenancy Branch by the Landlord. However, based on the Tenant's affirmed testimony, it appears the Tenant did not receive it, and the Landlord did provide proof of the evidence served on the Tenant. Therefore, I will limit my consideration of the Landlord's evidence to the items listed above.

The Landlord testified she was not sure if she served her NDRP on the Tenant, and the Tenant testified she did not receive it.

I find that the Landlord did not serve her NDRP on the Tenant, and I therefore dismiss the Landlord's application.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed the Tenant's claim for monetary compensation.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the October One Month Notice, and if not, is the Landlord entitled to an order of possession?
- 2) Is the Tenant entitled to an order cancelling the November One Month Notice, and if not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

The Landlord and Tenant agreed that rent is \$1,300.00, due on the first of the month, and that the Tenant paid a security deposit of \$650.00 which the Landlord still holds. The Landlord testified that the tenancy began on August 1, 2016; the Tenant testified it began on September 6, 2016.

A copy of the October One Month Notice was submitted as evidence. The Landlord testified she served the October One Month Notice on the Tenant by putting it in the mailbox on an unknown date; the Tenant testified she received it on October 15, 2021.

The October One Month Notice is signed and dated by the Landlord, but does not list the name of the Landlord beside the signature; in place of the Landlord's name is a date. The October One Month Notice gives the address of the rental unit, and is in the approved form. However, it does not state an effective date. On page 2, reasons for the Notice are indicated, but the Details of the Event(s) section is blank.

I advised those present that I was cancelling the October One Month Notice, as page 1 is confusing and incomplete, and page 2 does not include details of the events. I find the October One Month Notice does not comply with the content requirements of section 52 of the Act, is therefore without effect or force, and is cancelled.

A copy of the November One Month Notice was submitted as evidence. The Landlord testified she served the November One Month Notice on the Tenant by putting it in the mailbox on an unknown date; the Tenant testified she received it on November 22, 2021.

The November One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The Details of the Events section indicates that the Tenant has been repeatedly late paying rent, and lists dates.

The Landlord testified that for years the Tenant has almost always paid rent late, and referred to screenshots of rent transfers she submitted as evidence. The multiple screenshots show rent received by the Landlord on February 2, 2021; March 2, 2021; April 2, 2021; June 3, 2021; July 5, 2021; and August 2, 2021.

The Tenant submitted that “[the Landlord]’s bank does not post deposits on any weekends.”

The Landlord testified that as an experiment, her partner sent her an e-transfer on the weekend, which went through in under a minute. The Landlord submitted as evidence a screenshot of an Account Details page showing the \$100.00 e-transfer transaction on Saturday February 26, 2022.

The Landlord testified that she has another rental property, and always receives rent on time via e-transfers from the other tenant.

The Tenant testified that she always initiates rent transfer payments on the first of the month, but submitted no evidence in support.

The Tenant testified that the late rent payment in July 2021 was her fault, as she accidentally failed to hit the ‘Complete’ button during the transfer. The Tenant testified that until October 2021, she had never received a late rent notice in over five years.

Analysis

Based on the testimony of those present, I find the Landlord served the Tenant the November One Month Notice on November 22, 2021, in accordance with section 88 of the Act, and that the Tenant received it on the same day.

As it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for the notice, and is in the approved form, I find the November One Month Notice meets the form and content requirements of section 52 of the Act.

The November One Month Notice was received by the Tenant on November 22, 2021. Therefore, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: December 2, 2021. However, the Tenant submitted her amendment to dispute the November One Month Notice on December 3, 2021. Therefore, in

accordance with section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on December 31, 2021, the effective date of the Notice, and the Landlord is entitled to an order of possession.

As the Tenant is unsuccessful in her application, I decline to award her the filing fee.

Conclusion

The Tenant's application is dismissed.

The Landlord is granted an order of possession which will be effective at 1:00 p.m. on March 31, 2022.

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 10, 2022

Residential Tenancy Branch