



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNC, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 09, 2022 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a One Month Notice to End Tenancy for Cause dated February 07, 2022 (the “Notice”)
- For a repair order

The Agent for the Landlord (the “Agent”) appeared at the hearing. Nobody appeared at the hearing for the Tenant. I waited 10 minutes at the outset of the hearing for the Tenant to appear; however, the Tenant did not do so. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package and Tenant’s evidence. The Agent testified that the Landlord’s evidence was posted to the door of the rental unit March 31, 2022.

I accept the Agent’s undisputed testimony about service of the Landlord’s evidence and find the Landlord complied with rule 3.15 of the Rules and section 88(g) of the *Residential Tenancy Act* (the “Act”) in relation to serving their evidence on the Tenant.

The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
4. Is the Tenant entitled to a repair order?

Background and Evidence

The Agent testified as follows. There is a written tenancy agreement between the parties. The tenancy started December 18, 2020, and is a month-to-month tenancy. Rent is \$1,500.00 due on the first day of each month. The Tenant paid a \$750.00 security deposit.

The Tenant submitted the Notice. The effective date of the Notice is March 31, 2022. The grounds for the Notice are that the Tenant is repeatedly late paying rent and breach of a material term.

The Agent testified that the Notice was posted to the door of the rental unit February 07, 2022.

The Agent testified that the Tenant paid rent late every month from August of 2021 to February of 2022.

The Agent sought an Order of Possession effective two days after service on the Tenant and testified that the Tenant has not paid rent for the last two months.

The Tenant submitted an email they authored about the Notice. The Landlord submitted a rent ledger.

Analysis

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I dismiss the Application without leave to re-apply because the Tenant did not appear at the hearing to provide a basis for the Application.

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

I accept the undisputed testimony of the Agent that the Notice was posted to the door of the rental unit February 07, 2022. I find the Notice was served in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice February 10, 2022, pursuant to section 90(c) of the *Act*. However, the Tenant filed the Application February 09, 2022, and therefore I find the Tenant received the Notice by February 09, 2022. I also find the Tenant disputed the Notice in time.

The Landlord has the onus to prove the validity of the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 38 addresses repeated late payment of rent and 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.

I accept the undisputed testimony of the Agent that the Tenant has paid rent late every month from August of 2021 to February of 2022, and I find this amounts to repeated late payment of rent as described in Policy Guideline 38. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I find the Notice is valid and I uphold the Notice. I note that the Tenant has not provided any compelling evidence to dispute the Notice.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Tenant's dispute of the Notice has been dismissed without leave to re-apply. Further, I have found the Notice is valid and have upheld the Notice. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Conclusion

The Landlord is issued an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective two days after service on the Tenant. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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: May 13, 2022

Residential Tenancy Branch