



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC-MT, AAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's Application and evidence. The tenant testified that they did not receive the landlord's evidence until 10 minutes before the hearing, but confirmed that they were ok with admitting the evidence and proceeding with the scheduled hearing.

The tenant confirmed receipt of the 1 Month Notice dated February 15, 2022, which was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 1 Month Notice on February 18, 2022, 3 days after posting.

The tenant filed an application for an extension of time to dispute the 1 Month Notice. The tenant's application was filed on February 25, 2022, within the 10 required by the *Act*. Accordingly, the tenant's application for more time is not required, and therefore cancelled.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began four or five years ago, with monthly rent set at \$800.00, payable on the first of the month. No security deposit was collected for this tenancy. Both parties confirmed that rent payments were made in cash, and the tenant would occasionally work for the landlord in order to pay the rent. The tenant was never provided any receipts.

The landlord served the notice to end tenancy dated February 15, 2022 providing the following grounds:

1. The tenant is repeatedly late paying rent.
2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.

The landlord confirmed in the hearing that they were not requesting an Order of Possession for illegal activity, but that the tenant has been repeatedly late in paying their rent.

The landlord provided a spreadsheet of rent payments made by the tenant from June 2020 to June 2022. The landlord testified that the tenant was falling behind on rent, and as a favour the landlord had hired the tenant in order to assist the tenant in paying their monthly rent. The landlord testified that this took place from September 2021 to January 2022, but that no rent was paid from February 2022 to June 2022, and March 2021 to July 2021.

The tenant disputes the accuracy of the landlord's submissions and spreadsheet, and notes that no receipts were ever issued. The tenant testified that they had worked on the landlord's boat after February 2022, but that this wasn't reflected on the spreadsheet or applied to the outstanding rent. The tenant testified that the rent was paid in full with the exception of the May and June 2022 rent. The tenant testified that he had other debts to the landlord which were not unpaid rent, and denies that they have been repeatedly late in paying rent.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required time period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

As the landlord did not provide submissions on how the tenant or their guest had engaged in illegal activity, no Order of Possession will be granted on these grounds.

The landlord wishes to end this tenancy for repeated late rent payments.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

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...

The tenant disputes the accuracy of the landlord's records, noting that they paid rent in cash, for which they did not receive receipts for, or they had worked for the landlord, and rent was deducted from their pay.

Section 26(2)(a) of the *Act* states that a "landlord must provide a tenant with a receipt for rent paid in cash." Regardless of whether the tenant has requested a receipt or not, the onus is on the landlord to provide receipts. In consideration of the evidence before me, I find that the landlord has never provided the tenant with any receipts during this tenancy. I find that the landlord's failure to comply with the *Act* has left the tenant in a position where they would be unable to provide proof of payment if they had paid in cash, which the tenant testified was the case in this instance. The issue of proof of rent payments is further complicated by the fact that the tenant has worked for the landlord to help with their rent payments. Although the landlord provided a summary of money owed per month, the landlord did not provide sufficient detail to support what dates specific payments were made on. In light of the disputed evidence and testimony, and in light of the fact that the tenant would not have been provided a receipt for their payments, I find that it would be grossly unfair to transfer the burden of proof for this payment on the tenant. As noted above, the onus is on the landlord to support that they have grounds to end this tenancy for the reason provided on the 1 Month Notice. In this case, I am not satisfied that the landlord has provided sufficient evidence to support that the tenant has been repeatedly late in paying their rent. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated February 15, 2022. The 1 Month Notice is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant also requested an order to allow the tenant or their guests access to the rental unit. I do not find that the evidence shows that the tenant or their guests have been denied access, and accordingly, I dismiss this portion of the application with leave to reapply.

As the tenant was successful with their application, I allow the tenant to recover the filing fee.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated February 15, 2022 is cancelled and is of no force or effect.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to

implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for an order to allow the tenant or their guests access is dismissed with leave to reapply.

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: June 21, 2022

Residential Tenancy Branch