



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause.

The tenant and 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

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

The landlord testified that this fixed term tenancy began on April 1, 2018 and reverted to a month-to-month tenancy after March 31, 2019, and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 was payable on the 1st day of each month, which has been increased over time and is now \$1,040.00 per month, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a strata complex, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on March 13, 2022 the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the Notice) by email, which the parties had agreed to at the beginning of the tenancy. A copy of the Notice has been provided by the tenant for this hearing and it is dated March 13, 2022 and contains an effective date of vacancy of April 16, 2022. The landlord is aware that the effective date is incorrect, however the Residential Tenancy Branch advised that it will be corrected by the Arbitrator at the hearing, and there was no need to prepare a new Notice. The reasons for issuing the Notice state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord has also provided copies of 3 notices to end the tenancy for unpaid rent or utilities and testified that rent for March, 2022 was paid on March 10, 2022. Also, April, 2022 rent wasn't paid until April 7, 2022 and May's rent was paid on May 5, 2022.

The tenant's van was parked in the parking area of the complex, and the landlord was advised by the strata that the van was broken into and broken glass was everywhere. The tenant didn't clean it or have anyone else clean it for him, and the strata hired someone to do so and gave the landlord an invoice for \$288.00 which the landlord had to pay.

The tenant's van also had an oil leak and the tenant was told by the strata to clean it up and was warned that the van would be towed. The tenant ignored letters of the strata and the landlord. The landlord received letters from the strata, which were passed on to the tenant by the landlord. The landlord is fined \$200.00 each week, to a total of \$10,000.00 to date.

The landlord had conversations with strata management, and a person went to talk to the tenant but received no response.

All tenants were required to move their vehicles so that the parking area could be cleaned, which is done annually, but the tenant ignored all of the notices. The strata called the landlord when the cleaning company arrived, and the landlord called the tenant until the van was moved.

When the landlord tried to help the tenant and support him, and all through the tenancy the landlord told the tenant that the landlord could help the tenant apply for assistance for the payment of rent. However, the tenant never wrote to the strata saying that he was not able to do what they wanted him to. The strata advised the landlord that another person drove the van for the tenant due to the tenant's physical disability.

The tenant testified that he is disabled and confined to a wheelchair, and the tenant's caretaker is the tenant's step-son who drove the van. The step-son put down some absorbent material to absorb the oil and cleaned it.

The mailboxes have been broken into so many times from November, 2021 to April, 2022, and no mail was being delivered; tenants had to go to a post office to collect mail, and the tenant didn't receive all of the notices. However, the most recent one was returned by the tenant with a note that the tenant and caretaker were in the process of cleaning it up, and put it in the mail slot in the other building of the condominium complex.

The tenant needs until the end of August to move out of the rental unit.

SUBMISSIONS OF THE LANDLORD:

The landlord does not wish to make the tenant homeless, however cannot afford to continue paying strata fines.

SUBMISSIONS OF THE TENANT:

None

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 Cause and I find that it is in the approved form and contains information required by the *Act*. The landlord is correct, that the law provides that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law, which is changed in this case to April 30, 2022.

The tenant does not dispute that rent has been late on more than 3 occasions. Three late payments of rent are the minimum number to justify ending a tenancy for repeated

late rent. The landlord has also provided copies of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, and I accept the undisputed testimony of the landlord of when rent was actually paid for those months. The landlord has also indicated in evidence that the tenant was late with rent for several months prior.

In the circumstances, I find that the landlord has issued the One Month Notice to End Tenancy for Cause in accordance with the *Act* and it is not necessary to examine the other reasons for ending the tenancy. Therefore, 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.

Conclusion

For the reasons set out above, the tenant's application 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: July 12, 2022

Residential Tenancy Branch