



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

The tenants' application was filed within the time period required under the Act.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The tenancy began on December 15, 2021. The current monthly rent is \$1600.00 payable on the 15th day of each month.

The landlord served the tenants with the One Month Notice, dated April 19, 2022, on April 20, 2022. The One Month Notice was issued on the grounds that the tenants are repeatedly late paying rent.

The landlord did not submit any evidence package but instead relied on the tenants' text message submissions in support of the grounds to end the tenancy due to repeated late payments.

The landlord testified the tenant's wife was dealing with rent payment since the beginning of the tenancy. The landlord testified the tenants were late paying rent every month since the beginning of the tenancy. The landlord testified the tenants made multiple excuses every time. The landlord testified her mortgage payments come out on the 18th of every month and she has incurred interest costs every month as the tenants paid rent late.

The landlord also testified the tenants had an unauthorized cat in the rental unit; however; as the landlord only issued the One Month Notice on the grounds of repeated late rent payments, the landlord was advised the issue of the unauthorized cat was not relevant to the matter before me.

The tenant testified that the landlord agreed to deal with him directly rather than his wife in regards to future rent payments and provide them a second opportunity but then still issued a One Month Notice the next day. The tenant testified that since he has been delaing with the payments they have only been late on one occasion and that was only by two days as he had to spend monies on lice treatments for their children. The tenant testified that the late payment issue has been rectified since receiving a warning from the landlord and that he never previously received any 10 Day Notices for being late.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In accordance with this guideline, it does not matter whether the late payments were consecutive; 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.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. There was no tenancy agreement submitted as evidence; however, the parties confirmed that rent was payable on the 15th of each month.

I find the landlord has failed to provide any evidence to support the issuance of the One Month Notice for repeated late rent payments. The landlord provided no specifics with respect to dates rent was or was not paid. The landlord provided no evidence such as receipts or deposits demonstrating the pattern of late rent payments. There landlord did not refer me to specific text message evidence that may have demonstrated examples of late rent payments. Although the tenant acknowledged that rent payments were late in the past, there is insufficient evidence of repeated late rent payments. There is also insufficient evidence that the tenant was warned or issued 10 Day Notices for any of the past late rent payments.

I find that the landlord has not provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of repeated late payments.

The landlord’s One Month Notice, dated April 19, 2022, is hereby cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenants’ application to cancel the landlord’s One Month Notice, dated April 19, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: August 29, 2022

Residential Tenancy Branch