



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on June 1, 2022.

Only the landlord and the landlord’s agent appeared. The tenants did not appear, although this was their application for dispute resolution.

The digital files show that on October 20, 2022, the tenants informed the Residential Tenancy Branch that they no longer required the hearing, although I am unsure why. The record shows the RTB contacted the landlord, and the landlord was not consenting to the tenants cancelling the hearing.

As the tenants did not have the written consent of the landlord to withdraw their application in accordance with Rule 5 of Residential Tenancy Branch Rules of Procedures. I find the hearing must proceed under the Act.

Further, on October 22, 2022, the tenants were sent a reminder notification that the hearing was proceeding today, October 25, 2022, at 11am. The hearing last approximately 25 minutes.

As the tenants did not appear, the hearing proceeded in the absence of the tenants in accordance with Rule 7.3 of Residential Tenancy Branch Rules of Procedures.

In a case where a tenant has applied to cancel the Notice, Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2020. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenants.

The reason stated in the Notice was that the tenant has:

- Repeatedly late paying rent.

The landlord's agent testified that the tenant is repeatedly late paying rent. The landlord submitted as evidence the copies of e-transfers sent for rent. Although the landlord has provided a large amount of late payment history, However, I have only referred to late payments commencing November 2021, as three (3) late payments is enough to end the tenancy.

The landlord's agent testified that the November 2021, rent was paid as follows: \$500.00 was received on November 1st and a further payment of \$400.00 was received on November 12, 2021.

The landlord's agent testified that the December 2021, rent was paid as follows: \$500.00 was received on December 1st and a further payment of \$450.00 was received on December 9, 2021, and a \$200.00 payment was made on December 17, 2021

The landlord's agent testified that the January 2022, rent was paid as follows: \$500.00 was received on January 6, 2022, and a further payment of \$450.00 was received on January 21, 2022.

The landlord's agent testified that the February 2022, rent was paid as follows: \$500.00 was received on February 4, 2022, a payment of \$500.00 was made on February 16, 2022, and a further payment of \$450.00 was received on February 18, 2022.

The landlord's agent testified that the March 2022, rent was paid as follows: \$450.00 was received on March 18, 2022, and a further payment of \$500.00 was received on March 23, 2022.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants are repeatedly late paying rent.

The Residential Tenancy Guideline 38, reads in part the following:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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. 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

[Reproduced as written]

I accept the undisputed testimony of the landlord's agent that the tenants have been late paying rent on more than three occasions. This is supported by the e-transfer history. I find the tenants were late paying rent for November and December 2021, late paying rent in January, February and March 2022. I find the Notice issued on June 1, 2022, is valid and complies with section 52 of the Act. Therefore, I find the tenancy legally ended on July 31, 2022, as the effective date of July 1, 2022, is automatically corrected under the Act.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end in accordance with the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application to cancel a Notice is dismissed. The landlord is granted an order of possession.

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: October 25, 2022

Residential Tenancy Branch