



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 by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;

The tenants attended (“the tenant”). The agent JY attended for the landlord (“the landlord”). Each party was granted the opportunity to submit affirmed testimony, submit documents and call witnesses. Neither party called witnesses.

No issues with respect to service or delivery of documents or evidence were raised by the parties. I find each party served the other in compliance with the *Act*.

Each party confirmed they were not recording the hearing.

Each party confirmed their email address to which the Decision shall be sent.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute

resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 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 landlord requested an Order of Possession effective November 30, 2022.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the One Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

I do not refer to all the evidence in my Decision. While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

Background of Tenancy

A copy of the tenancy agreement was submitted.

The parties agreed the tenancy began March 5, 2020 and is for a fixed term ending March 30, 2023. Rent is \$4,466.00 payable on the first of the month. The tenant provided a security deposit of \$2,200.00 which the landlord holds.

The parties agreed the One Month Notice was served by registered mail on May 13, 2022, effectively served under section 90, 5 days later, May 18, 2020. A copy of the Notice was submitted which is in the standard RTB form. The reason stated for the issuance of the Notice was that the tenant is repeatedly late paying rent.

Landlord's Testimony

The landlord testified that the tenant was late paying rent 11 times in the 12-month period immediately prior to the issuance of the Notice. The landlord submitted a ledger of all payments received from the tenant during the tenancy supporting the testimony.

Tenant's Testimony

The tenant acknowledged they were late paying rent many times in the year preceding the issuance of the Notice although they did not believe late payments were as frequent as claimed.

The tenant stated they had financial issues which caused payments to be late.

The tenant testified that shortly after the Notice was issued, they discussed the matter with the agent attending the hearing and an agreement was reached that if the tenant paid on time henceforth, the landlord would not proceed to evict. The agent denied any such agreement and no supporting documents were submitted.

The tenant stated they had not been late paying rent since the Notice was issued.

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 Unpaid Rent or Utilities (the Notice) and I find that it is in the approved form and contains information required by the Act. The reason for issuing it is in dispute.

The tenant's position is that the landlord agreed not to enforce the Notice if the tenant paid rent on time henceforth which they have done.

I refer to *Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent*, which states, in part:

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 this case, the landlord did not fail to act in a timely manner after the most recent rent payment, and therefore, I do not determine that the landlord has waived reliance.

The tenancy agreement specifies that rent is due on the 1st day of each month. It also states: “The tenant must pay the rent on time unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.”

The Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Three late payments are the minimum to justify repeated late rent. The tenant does not dispute that rent has been paid late on more than 3 occasions in the year immediately preceding the issuance of the Notice.

I accept the landlord's evidence and find that the tenant has been repeatedly late paying rent, and 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. The effective date of the Order is November 30, 2022 as requested by the landlord.

Conclusion

The tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on November 30, 2022.

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: October 07, 2022

Residential Tenancy Branch