



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC / OPC, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). Landlord YYL’s application against tenant YTL for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And tenant TL’s application against landlord YYL and landlord TL to cancel the One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was also represented by landlord TL’s manger, CC.

The parties confirmed that each had served the other with their notice of dispute resolution proceeding form and supporting evidence packages.

Preliminary Issue – Identity of Parties

At the outset of the hearing, TL confirmed that he was YYL’s property manager, and that he is not named on the tenancy agreement. For clarity, I will refer to TL by his initials, and YYL as “the landlord” for the balance of this decision.

TL also stated, and tenant TL confirmed, that the tenant used his “English name” (tenant TL) on his application, and the landlord used his legal name (tenant TYL) on her application. Tenant TL and tenant TYL are the same person. I will refer to him as “the tenant” for the balance of the decision.

I will amend both applications to list the tenant’s legal name and to indicate that he also goes by his English name.

The landlord confirmed that her given name is one word (as written on her application) and not two words (as written on the tenant’s application). I will amend the tenant’s application accordingly.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord and the tenant entered into a written tenancy agreement starting September 1, 2021. Monthly rent is \$2,200 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,100, which the landlord continues to hold in trust for the tenant.

The tenant did not pay April 2022 rent when it was due on April 1, 2022. He testified that he had problems with his bank, and he was unable to e-transfer the rent to the landlord as he normally did. He testified that he notified the landlord of the problem and the parties arranged for the landlord's husband to attend the rental unit and pick up April's rent in cash at a date and time that worked for both his and the tenant's schedule. The landlord's husband attended the rental unit on April 4, 2022 and picked up the cash rental payment. A copy of the receipt the landlord's husband gave the tenant was entered into evidence.

The tenant had similar bank issues in May 2022. However, this time, he was not aware that the e-transfer did not occur, as he was in Saskatchewan, or that he had not paid his rent when it was due. The landlord testified that her husband attended the rental unit on May 2, 2022 and posted a 10 day notice to end tenancy for non-payment of rent on the door. A copy of this document was not submitted as evidence. Upon learning of his failure to pay May 2022 rent, the tenant contacted the landlord and arranged for the landlord's husband to return to the rental unit to pick up the rent. He returned on May 4, 2022, collected the rent in cash from the tenant's wife, and issued a receipt for the full amount.

The tenant's account had the same issue in June 2022, and he was not aware that his e-transfer of June rent had not gone through. The landlord testified that she served a second 10 day notice to end tenancy for unpaid rent. A copy of this was not entered into evidence. The tenant contacted the landlord and arranged a time for her husband to come to the rental unit. He returned on June 2, 2022, collected the rent in cash, and issued a receipt for the full amount.

On June 25, 2022, the landlord served the Notice on the tenant by posting it on the door of the rental unit. It listed the reason for ending the tenancy as “tenant is repeatedly late paying rent.”

The tenant paid rent on time, in cash to TL at TL’s office, in July 2022 and every month thereafter.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47 of the Act states:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(b) the tenant is repeatedly late paying rent;

RTB Policy Guideline 38 states:

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

As such, the landlord bears the onus to prove it is more likely than not that the tenant was late paying rent at least three times.

Monthly rent was due on the first of each month. Based on the undisputed evidence of the parties, I find that the tenant paid April 2022 rent on April 4, 2022, May 2022 rent on May 4, 2022, and June 2022 rent on June 2, 2022.

However, based on the evidence presented at the hearing, I am not satisfied that the reason the tenant paid April 2022 rent late was due to his own actions. The parties’

evidence was the tenant and the landlord's husband set April 4, 2022 as the date that the landlord's husband could pick up the rent. The tenant's evidence was that this date was chosen because it worked for both the landlord's husband and himself. The landlord did not contradict this. I am unable to say whether the reason why the landlord's husband could not have come earlier (for example, later in the day on April 1, 2022) was due to the tenant's availability or the landlord's husband's. As such, I am not satisfied that the reason for the late payment of April 1, 2022's rent was attributable to the tenant's actions and not the landlord's husband's. The landlord bears the evidentiary burden to prove this is more likely than not. Accordingly, I do not find it appropriate to consider the late payment of April 2022 rent to count as one of the three required late rent payments for the purposes of section 47(1)(b) of the Act.

I have no such concerns about the late payments of April or May 2022. The tenant acknowledged that he did not realize the transfers were late until after rent was due. Accordingly, I find that instances amount to late rent payments for the purposes of section 47(1)(b) of the Act.

The landlord has only satisfied me that it is more likely than not that two of the three late payments were due to the tenant's actions. As such, I do not find that the Notice is valid. Accordingly, I order the Notice cancelled and of no force or effect.

The tenant has come perilously close to being evicted. He is cautioned that any subsequent late payment of rent may amount to the third late payment necessary for the landlord to issue a notice to end tenancy for cause. He should take care that all future rent is paid on time and in full.

Conclusion

I dismiss the landlord's application, in its entirety, without leave to reapply.

I grant the tenant's application, and order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

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: November 24, 2022

Residential Tenancy Branch