



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNR CNC MNDCT OLC

The tenants seek an order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”). They also seek an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice for Cause”) pursuant to section 47 of the Act. In addition, the tenants seek compensation and an order for landlord compliance.

The landlord and one of the tenants attended the hearing. The parties were affirmed before giving testimony and no service issues arose. It should be noted that the second tenant’s name is added to the style of cause to this Decision. Both tenants are current tenants on the tenancy agreement.

Preliminary Issue: Severing of Claims

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

It is my finding that the claims related to compensation and for an order for landlord compliance are sufficiently unrelated to the primary and most important relief sought, namely, whether the two notices to end tenancy ought to be cancelled or upheld. As such, the claim for compensation is dismissed *with* leave to reapply. The claim for an order for landlord compliance (section 62) is dismissed *without* leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order cancelling the Notice for Cause?
3. If not (for either notice to end tenancy) is the landlord entitled to an order of possession?
4. Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Relevant evidence complying with the *Rules of Procedure* was considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced. For this reason, and for reasons that are set out below, not all of the parties' testimony (for example, content about property damage to the garage doors and so forth) will be reproduced.

The tenancy began in 2015 and monthly rent is currently \$1,148.98. Rent is due on the first day of the month. There is no security or pet damage deposit with this tenancy. A copy of a written tenancy agreement was in evidence.

On July 16, 2022 the landlord issued the Notice. The Notice was served by email in accordance with prearrangement. A copy of the Notice was in evidence, and it indicated that \$2,708.88 was due on July 15. The landlord testified that the tenant paid the rent for July 1 but that the amount was rent arrears from previous months and years. As of today's date, (December 13, 2022) the balance owing in rent arrears is \$2,203.78.

On September 19, 2022 the landlord issued the Notice for Cause. This notice was also served by email and a copy of the Notice for Cause was in evidence. Two grounds were listed on the Notice for Cause. One was for the tenant repairing damage to the rental unit and the other ground was for repeated late payment of rent.

The landlord testified that the tenant has continuously paid his rent late. He has remained patient with the tenant's inability to pay rent on time. However, he is tired of the tenant's excuses and expects to be paid rent on time. He further noted that since July the tenant was late paying rent as follows: August 11, September 9, October 6, November 3. The tenant did pay rent on time for December 1, however.

Submitted into evidence by the landlord is an Excel spreadsheet covering the tenant's ledger since 2015. The spreadsheet contains information on the date that rent was due, when the rent was paid, and the amount paid if any.

The tenant testified that over the years he's always paid rent in two chunks, and that rent is sometimes missed. But he always gets caught up. He admitted that, with two young children and a full-time job, life does get in the way. The tenant does not, he admitted, dispute that rent has often been late. That said, he does not completely agree with the balance of rent arrears. The amount claimed by the landlord is inconsistent with his own bank records.

The tenant testified that “rent’s been paid as it’s always been paid.” And the landlord has been “pretty lenient” over the years. He believes that the issuing of the two notices to end tenancy should have been necessary.

Analysis

Where a tenant disputes a notice to end tenancy, the onus shifts to the landlord to prove the ground for ending the tenancy.

In this dispute the landlord issued a notice to end tenancy under section 47(1)(b) of the Act, namely, that the tenants are repeatedly late paying rent. The notice to end tenancy, I find, complies with section 52 of the Act in form and content.

Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent states that

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.

The landlord has indeed been “pretty lenient” over the past seven years with the tenants’ tardiness in paying rent. However, the landlord finally took the bold step of warning the tenants that if rent was late a notice to end the tenancy would be issued. And that is what happened on September 19 when the Notice for Cause was served upon the tenants. Yet, despite the issuing of this notice to end tenancy for repeated late payment of rent, the tenants were again late paying the rent for October and November. The landlord’s spreadsheet and documentary clearly paint a picture of repeated late payments of rent. (To the tenants’ credit, they paid rent on time for December.)

Taking into careful consideration all of the oral and documentary evidence before me, I find that the landlord has proven a section 47(1)(b) ground for issuing the *One Month Notice to End Tenancy for Cause*. I therefore dismiss the tenants’ application to cancel the Notice for Cause.

Having upheld the Notice for Cause on the basis that the tenants were repeatedly late paying rent, I need not consider the second ground listed on the Notice for Cause nor need I consider the *10 Day Notice to End Tenancy for Unpaid Rent*.

Pursuant to section 55 of the Act the landlord is granted an order of possession of the rental unit. Having considered the submissions of both the parties as to when such an order of possession would take effect, it is my decision that the order of possession will have an effective date of February 28, 2023. The tenancy is thus ordered ended no later than February 28, 2023. The landlord's flexibility in this regard is exceptionally generous, and the tenants ought to bear this in mind going forward.

An order of possession is issued with this Decision to the landlord who must serve the order of possession upon the tenants within two days of receiving this Decision.

Regarding the amount of the rent arrears owing, the tenants must pay off the balance before the end of the tenancy. They are also reminded that monthly rent continues to be due on the first day of the month. Last, this decision does not in any way fetter the landlord's right to file an application for dispute resolution claiming compensation for any unpaid rent or for any future damages that may arise, or, for any other matter under the Act during the tenancy.

Conclusion

The application is dismissed, with and without leave to reapply.

The landlord is granted an order of possession effective February 28, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*.

Dated: December 14, 2022

Residential Tenancy Branch