



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant filed an Application for Dispute Resolution on July 28, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Their Landlord issued this One-Month Notice on July 21, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 20, 2022. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matters

Each party questioned the timeliness of the other’s evidence provided for this hearing. The Landlord referred to the 14-day rule for the Tenant’s submissions, with that material sent to them only in the week prior to the hearing. The Tenant’s response was sent only after they received the Landlord’s material, on December 8th or 9th, as the Tenant stated in the hearing.

I grant an exception to timelines as set in the *Residential Tenancy Rules of Procedure*, specifically Rule 3.14 (for the Tenant’s evidence), and Rule 3.15 (for the Landlord’s response evidence). I apply Rule 3.17 and accept both parties’ evidence as submitted, finding there was no undue prejudice to either party by its consideration. In essence this stems from the Landlord’s rather late submission of evidence only at the start of December, despite having knowledge of this hearing as early as the start of September.

The Tenant chose to provide evidence in response to what was provided by the Landlord here; I find it unfair for the Landlord to rely on strict timelines when they provided their own evidence in this matter quite late with respect to the upcoming hearing date.

Issue to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice issued by the Landlord on July 21, 2022?

If the Tenant is not successful in this Application, is the Landlord entitled to an Order of Possession, as per s. 55 of the *Act*?

Background and Evidence

Both parties confirmed the basic information about the tenancy agreement that is in place. This tenancy started on October 1, 2017, with the basic rent amount being \$2,600.

The Tenant described the rent amount as increasing “over time”, with the Landlord implementing rent increases along the way. The Tenant confirmed that the Landlord increased the rent in 2022, with the current rent amount of \$2,808.50 in effect from March 1, 2022. Prior to this, the rent amount was \$2,767.

The Landlord provided a copy of the ‘Notice of Rent Increase’ form they signed on November 21, 2021, notifying the Tenant of the rent increase to \$2,808.50, payable starting on March 1, 2022.

This increase in rent is what caused difficulties with full payment of rent amounts in 2022. The Landlord issuing the One-Month Notice to the Tenant stems from this issue.

In the Landlord’s account, the rent paid amounts were as they listed on the One-Month Notice:

- February 2022 rent (at \$2,767), received on March 2nd
- March 2022 rent (at \$2,767, *i.e.*, not including the rent increase amount) received on March 2nd

- April rent (at \$2,767, *i.e.*, not including the rent increase amount), received on April 4th
- May rent (at \$2,767, *i.e.*, not including the rent increase amount), received on May 10th
- June rent (at \$2,808.50, including the rent increase amount), received on June 3rd
- July rent received on July 4th – this included overdue rent increase amounts from previous months; however, the paid amount did not include the rent increase amount for this then-current month of July.

By the Landlord's count, this was 6 consecutive months in which the Tenant did not pay the full amount of required rent on time.

The Tenant explained the gap in payment of full rent as follows. They attempted to clarify the starting month of the rent increase, while away from the rental unit without access to the printed form the Landlord had previously sent to them. According to the Tenant they queried the Landlord on the correct amount and starting date in February; however, the Landlord did not provide the correct information to the Tenant until the end of April 2022. Once they were aware of the correct increase amount, they began to pay those extra amounts that were previously missed.

This accounts for the non-increased rent amount (*i.e.*, \$2,767) paid in February and March and April, without clarity from the Landlord on the exact amount. It was on April 30 that the Landlord finally responded and requested the Tenant to put all the amounts owing on the following month's rent. This May payment was again delayed while the Tenant awaited instruction on how to pay the extra amount owing for each of March, April and May.

Following this, in June the Tenant paid \$2,909 (that is, rounding up the \$2,808.50 amount). In July, the Tenant paid \$83 extra for March and April amounts still owed, the once more they made an extra payment for \$41.50 on July 14.

The Tenant pointed to previous errors and inconsistencies they had communicated to the Landlord, in order to show that the Landlord was not always aware of, or followed, correct legal procedure on things. The Landlord similarly drew on what they described as "tenant negligence" in the rental unit.

Analysis

The *Act* s. 47 provides that a landlord may end a tenancy by giving a One-Month Notice to end tenancy if, as per subsection (b), a tenant is repeatedly late paying rent.

In this matter, the Landlord has the onus to prove that this reason they provided for ending the tenancy is valid and sufficient.

I find this was a situation in which the Tenant *paid rent*; however, that was the incorrect amount. There was no testimony from the Tenant that they disputed a rent increase or otherwise withheld the correct amount to make things intentionally problematic for the Landlord. I find it reasonable, given the unique situation where they were not at all times present in the province, for them to seek clarification from the Landlord. I accept their statement as fact that they did not receive that clarification from the Landlord within a relatively short period of time. I find as fact the Landlord did not clarify for a period of almost three months.

I find it was acceptable for the Tenant in these circumstances to seek clarity. I find the record shows the Tenant made amends on rent amounts owing as soon as possible, with one more instance of final rent payment in May being delayed because of more clarity needed on the exact amount owing.

There was some reference to a 10-Day Notice to End Tenancy for Unpaid Rent that the Landlord at some point issued. Evidently the Landlord withdrew this end-of-tenancy notice when the Tenant paid the full amounts owing.

In sum, I find the Tenant was delayed on rent payments being completed in full as per the most recent rent increase. I find it fair that they sought clarification from the Landlord, and full rent payments were delayed when they sought to pay the correct full amounts, including amounts owing.

I find there was a plausible explanation on why rent amounts were not received until the second or third day after their deposit by the Tenant. For the future the Tenant has shown that they have scheduled rent payments as required by the agreement they have in place with the Landlord. This is on the 1st of each month; I trust going forward the payment plan that the Tenant has set up will ensure that their correct and full payments are made as required on the 1st of each month.

Conclusion

For the above reasons, I order that the One-Month Notice issued by the Landlord on July 21, 2022 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 s. 9.1(1) of the *Act*.

Dated: December 20, 2022

Residential Tenancy Branch