



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, FFL
 Tenants: CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

On September 29, 2022 the landlord applied for:

- an order of possession, having served a One Month Notice for Cause, dated September 12, 2022 (the One Month Notice); and
- the filing fee.

On October 5, 2022 the tenants applied for:

- an order cancelling the One Month Notice; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the respective hearing materials.

In August 2022, the parties settled on an unrelated matter. The dispute decision number is noted on the cover page of this decision.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

- 3) Are the tenants entitled to the filing fee?
- 4) Is the landlord entitled to 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 parties agreed on the following particulars regarding the tenancy. It began October 1, 2016; rent is \$2,082.00 a month, due on the first of the month; and the tenants paid a security deposit of \$1,000.00 which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified they served the One Month Notice on the tenant by sending it by registered mail to the rental unit on September 13, 2022, and provided a tracking number as noted on the cover page of this decision. The tenant testified she received the Notice on October 4, 2022, and that it had got lost in the mail, initially being sent to a different municipality. The Canada Post website confirms there was some delay in delivery.

The One Month Notice is in the approved form, signed and dated by the landlord, gives the address of the rental unit, states an effective date of October 31, 2022, and states the tenancy should end because the tenants are repeatedly late paying rent.

The Details of the Events section of the One Month Notice lists 6 months in which the tenants paid rent late:

1. July 2021
2. September 2021
3. December 2021
4. February 2022
5. April 2022
6. July 2022

The landlord testified that DK, a person who had maintained the property until February or March 2022, had repeatedly told the tenants that they may not pay rent late and that they needed to pay on time.

The landlord called DK as a witness. Once affirmed, DK stated that when the tenants first moved in, rent was on time, but after a while, rent was delayed on a regular basis.

DK testified: "There was always a time given that she would pay the rent, but a lot of that was never followed through by the tenant that she promised." DK testified that when the tenants were late with rent, DK would call and text the tenant and the tenant's daughter, and the tenant would let DK know she would pay by a certain date; DK testified "that's always how it worked with [the tenant]."

The tenant asked DK to name one time he called her about late rent; DK said there were lots of times, but the tenant does not have an answering machine. DK testified that if he could not reach the tenant, he would contact her daughter.

After DK had been excused from the hearing, the tenant testified that DK had never spoken to the tenant about rent payments, and that he had only told her that she and her spouse were good tenants.

When questioned by landlord's counsel, the tenant confirmed that rent was paid late on:

1. July 2021
2. September 2021
3. December 2021
4. February 2022
5. April 2022
6. July 2022
7. September 2022

Submitted as evidence by the landlord is a text message between the landlord and DK, beginning on February 5, 2021. In it, the landlord asks DK to call the tenant and the tenant's daughter because rent has not been paid. DK replies, stating that the landlord can expect to receive the rent the next day, and that DK told the tenant: "the owner has no hesitation evicting u if u don't pay."

The landlord testified they sent the tenant a notice stating they should stop being late with rent, but they continued to pay late. The landlord submitted as evidence a copy of a July 2, 2022 letter, sent by registered mail to the tenants, which states in the subject line it is a "written demand," and states that the tenants owe outstanding rent in the amount of \$2,052.00 and \$140.00 for a late charge penalty. The tenant confirmed she had received the letter.

Submitted as evidence is an email, also dated July 2, 2022, from the tenant to the landlord, in which the tenant explained that rent will be late due to the long weekend, and apologized that rent would be late. The tenant pointed out that the landlord

responded the next day, asking if the refrigerator is working, and did not mention the late rent.

The landlord submitted as evidence a September 3, 2022 email from the landlord, reminding the tenant of the rent increase effective September 1, 2022, acknowledging the \$350.00 rent deduction agreed upon in the August 2022 settlement, and informing the tenant that there is \$30.00 rent outstanding. Also submitted as evidence is an email from the tenant, dated September 7, 2022, in which the tenant states that the outstanding amount will be paid that day. The tenant noted the language the landlord used at the beginning of her email: "Just a reminder ...". The tenant referred to a later September exchange with the landlord about the fireplace; the tenant submitted that the landlord had never mentioned that the landlord was in financial straits, and that the tenant had no idea she was going to be evicted. The tenant testified she did not receive one email or notice.

The tenant raised the legal principle of *estoppel*, in which a party is prevented by their own acts from claiming a right to the detriment of the other party, who was entitled to rely on such conduct and acted accordingly.

The tenant testified that the landlord has never given the tenants written notice about late payment of rent, and that the tenant had no idea the rent payments were late, as her daughter makes the rent payments by e-transfer on behalf of the tenants. The tenant testified that the landlord never told her rent was late.

The tenant submitted that she had no excuses for the rent being late, and should have checked the e-transfers. The tenant testified that after the landlord informed her rent was late, the tenant paid the November 2022 rent early.

The tenant submitted that it has been a very difficult year for her family: her son was in a very serious accident, and both she and her spouse were ill with COVID. Because the tenant became emotional recounting these events, I paused the hearing for 5 minutes, after which the tenant confirmed she was prepared to continue.

Analysis

Based on the parties' testimony and the Canada Post delivery details, I find the landlord served the tenant the One Month Notice by registered mail on September 13, 2022, in accordance with section 88 of the Act, and that the tenant received it on October 4, 2022.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives it. As the tenants received the Notice on October 4, 2022 and applied to dispute it the following day, I find the tenants met the 10-day deadline.

Rule 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.

In this case, the onus is on the landlord to prove the reason they wish to end the tenancy, as indicated on the One Month Notice, that being that the tenants repeatedly paid rent late.

The parties agreed that, per the tenancy agreement, rent is due on the first of the month.

Section 47(1)(b) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

[Policy Guideline](#) 38. *Repeated Late Payment of Rent* states that three late payments are the minimum number sufficient to justify a notice under this provision. The Guideline states that a landlord who fails to act in timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this position.

The parties agree that the tenants paid rent late on the following seven occasions:

1. July 2021
2. September 2021
3. December 2021
4. February 2022
5. April 2022
6. July 2022
7. September 2022

After rent was late in September 2022, the landlord served the tenant with the One Month Notice on September 13, 2022, which I consider to be in a timely manner, considering Guideline 38.

However, the tenant has suggested the principle of estoppel applies, testifying that she was not aware of the late rent payments because her daughter sends the rent e-transfers on behalf of the tenants, and because the landlord had not informed the tenant that rent was late.

For me to find that estoppel applies in this case, I must find that the landlord acted in a manner that would indicate to the tenant that the landlord did not require the tenants to pay rent on time.

The tenant has submitted the following regarding late payment of rent:

- the tenant testified that DK never spoke to the tenant about rent payments;
- the tenant confirmed she received a July 2, 2022 letter from the landlord, sent by registered mail to the tenants. In the letter, submitted as evidence, the landlord states it is a “written demand” for outstanding rent in the amount of \$2,052.00;
- regarding an email submitted as evidence, also dated July 2, 2022, from the tenant to the landlord, in which the tenant explained why the rent will be late, the

tenant pointed out that the landlord responded by asking if the refrigerator is working, and did not mention the late rent;

- the landlord submitted as evidence a September 3, 2022 email in which she informs the tenant there is \$30.00 rent outstanding. The tenant noted that the landlord began the email: "Just a reminder ...";
- The tenant referred to a later September 2022 exchange with the landlord about the fireplace. The tenant submitted that the landlord had never mentioned the landlord was in financial straits, and that the tenant had no idea she was going to be evicted; and
- The tenant testified that the landlord has never given the tenants written notice about late payment of rent, and that the tenant had no idea the rent payments were late, as her daughter makes the rent payments by e-transfer on behalf of the tenants. The tenant testified that the landlord never told her rent was late.

The landlord has provided testimony and documentary evidence demonstrating that they communicated with the tenant about the late payment of rent on the following occasions:

- in a February 5, 2021 text message, the landlord asked DK to call the tenant and the tenant's daughter because rent has not been paid. DK replied, stating that the landlord can expect to receive the rent the next day, and that DK told the tenant that the landlord will not hesitate to evict the tenants if they do not pay the rent;
- in a July 2, 2022 letter, sent by registered mail to the tenants, and stating it is a "written demand," the landlord states the tenants owe outstanding rent in the amount of \$2,052.00;
- in an email, also dated July 2, 2022, from the tenant to the landlord, the tenant explained why rent will be late;
- in a September 3, 2022 email, the landlord informed the tenant there was \$30.00 in rent outstanding; and
- in an email dated September 7, 2022, the tenant stated that the outstanding rent will be paid that day.

I find that the tenant has provided contradictory testimony. At times she stated that she did not know rent was late, and that the landlord did not tell her that rent was late. At other points in the hearing, the tenant has acknowledged communication with and from the landlord about unpaid rent, including confirming she received the landlord's July 2, 2022 registered letter in which the landlord states it is a "written demand" for outstanding rent in the amount of \$2,052.00.

I find the landlord's evidence more convincing because she has provided consistent testimony on late rent payments and steps taken to communicate with the tenant that the late rent payments were a problem. The landlord has submitted documentary evidence and witness testimony in support, including the demand letter sent by registered mail, and DW's testimony that he would call or text the tenant regarding late rent payments.

Considering the evidence before me, based on a balance of probabilities, I find the landlord has proven the reason for the One Month Notice, that the tenants are consistently late paying rent. I further find that by various means the landlord communicated to the tenant that the landlord was not accepting of the tenant's habitual late payment of rent. Therefore, I find that the tenant has failed to prove that the landlord did not require the tenants to pay rent on time.

I find the landlord is entitled to an order of possession, in accordance with section 47 of the Act, as the tenants have been repeatedly late paying rent.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in her application, I order the tenants to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction.

The tenants' application is dismissed. As the tenants are unsuccessful in their application, I decline to award them the filing fee.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession effective at 1:00 pm on December 31, 2022.

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: December 9, 2022

Residential Tenancy Branch