



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC-MT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 40 and 55 of the Act; and,
2. More time to dispute the notice pursuant to Section 59 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant's Assistant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on August 2, 2022 by posting the notice on the Tenant's door. The Tenant's Assistant confirms receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on August 5, 2022 according to Sections 81(g) and 83(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on August 25, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as

proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on August 30, 2022, in accordance with Sections 82(1)(c) and 83(a) of the Act.

The Landlord served the Tenant with his evidence by Canada Post registered mail on December 9, 2022. The Landlord gave the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was deemed served on the Tenant on December 14, 2022 pursuant to Sections 81(c) and 83(a) of the Act.

The Tenant served the Landlord with additional evidence by Canada Post registered mail on December 16, 2022. The Tenant gave the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Tenant's additional evidence. This evidence was not uploaded on the RTB website, although the Tenant's Assistant said she had done this. I advised the Tenant's Assistant that she can refer to her materials as needed as long as she describes to me what she wants to rely on. I find that the Tenant's additional evidence was deemed served on the Landlord on December 21, 2022 pursuant to Sections 81(c) and 83(a) of the Act.

Preliminary Matter

Withdraw the MT claim

The Tenant agreed to withdraw the more time claim which was part of her application as this claim was no longer needed. The Tenant applied for dispute resolution in time. RTB Rules of Procedure 6.2 states:

6.2 What will be considered at a dispute resolution hearing: *The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

I find the Tenant's more time claim is not needed, and the withdrawal of this claim does not prejudice the Landlord in this matter. I allow the Tenant to amend her application by withdrawing this claim.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice to End Tenancy for Cause?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on October 10, 2011. Monthly rent is \$260.30 payable on the first day of each month.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was September 1, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Pad rent payed late;

Jan 6, March 30, July 6, Aug-, Notice given each late rent that it must be paid on or before the first of each month.

The Landlord testified that the Tenant's pad rent was late four times in 2022, on January 6, March 30, July 6 and August 2, 2022. The Landlord has not served a 10 Day Notice on the Tenant each time he was late, and since issuing the One Month Notice the rent has not been late.

The Landlord's uploaded documentary evidence showing the relevant dates when pad rental was paid lists:

06-Jan-2022	Descriptive Deposit Pad Rent	\$235.40
31-Mar-2022	Deposit	\$235.40
06-July-2022	Descriptive Deposit Pad Rent	
	# 12 [Tenant's last name] July 2022	\$244.35
02-Aug-2022	Descriptive Deposit Pad rent	

12 [Tenant's last name] August 2022 \$244.35

The Tenant's Assistant testified that at the beginning of 2022, her uncle was starting to be more forgetful. On the January, July and August dates, these rent payment dates occurred on holidays, but when able, the Tenant paid the outstanding rent to the Landlord at the credit union.

The Tenant's Assistant does not agree that March's rent was as late as the Landlord submits. Her uncle was going through medical issues at that time, and she was told that the Tenant gave the Landlord cash for March's rent. She submits that March 30, 2022 was the date that Landlord deposited the cash he received.

Since receiving the Landlord's One Month Notice, the Tenant's Assistant has stepped in to help her uncle arrange his financial business. The rent has not been late since August 2, 2022. The Tenant's Assistant testified that they have not received rent receipts specifying that the paid rent is for use and occupancy only. The Landlord asked if use and occupancy only is an implied factor in this One Month Notice for repeatedly late payments of rent. This question will be addressed in my analysis.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenant's benefit, Section 20(1) of the Act specifies the rules about payment of rent. It states, 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.

Section 40 of the Act is the relevant part of the legislation. It states:

Landlord's notice: cause

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

(a) the tenant is repeatedly late paying the rent;

...

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 45 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

...

The Landlord's One Month Notice was deemed served on August 5, 2022. Section 46 of the Act enables incorrect effective dates to automatically change. As the One Month Notice was served on August 2, 2022, I find then that the effective date for the One Month Notice is corrected to September 30, 2022 pursuant to Section 46(2) of the Act. After the correction, I find the One Month Notice complies with the form and content requirements of Section 45 of the Act. The Tenant applied for dispute resolution on August 10, 2022 which I find is within the 10 days after the date the Tenant received the notice pursuant to Section 40(4) of the Act.

RTB Policy Guideline #38-Repeated Late Payment of Rent provides a statement on the policy intent of the legislation regarding repeatedly late rent payments. It states:

...

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 exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Landlord submits there have been four late rent payments in 2022. The Tenant's Assistant has recently stepped into helping her uncle with his financial matters as he is suffering from some cognitive decline. She stated his doctor still says it is okay for her uncle to remain in his home. January, July and August rents were late, but the Tenant's Assistant said this was due to her uncle's cognitive decline and the fact that there were holidays at the beginning of those months.

She testified that March's rent was not as late as the Landlord submits. During that month, the Tenant was going through some medical issues and when the Landlord was telling him his rent was late, the Tenant provided the Landlord with cash for his rental payment that month. The Tenant's Assistant said that March rent was late, but that was when the Landlord deposited it into the bank. The Landlord's bank records seem to show a different method of deposit compared to January, July, and August. I find the Tenant's Assistant's evidence probative in this regard, and that March's rent was not as late as the Landlord is submitting.

The Act specifies that rent is due when specified under the tenancy agreement, and in this matter that is the first of the month. Each month when the Landlord received rent after serving the One Month Notice, he has not specified to the Tenant or the Tenant's Assistant that the rent was accepted for use and occupancy only. Considering the Tenant's cognitive decline, it would seem appropriate to notify the Tenant's Assistant in this regard. RTB Policy Guideline #11-Amendment and Withdrawal of a Notice to End Tenancy states:

D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

...

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;*
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and*
- the conduct of the parties.*

The Tenant's Assistant has stepped in and arranged the Tenant's financial matters, so that rent is automatically paid on the first of the month. The Landlord has never issued a 10 Day Notice for when rent payments were late in 2022. I find the Landlord's actions in accepting rent payments after the issuance of the One Month Notice and not providing a receipt for use and occupancy only is an implied waiver that the Landlord and the Tenant intend for the tenancy to continue as outline in RTB Policy Guideline #11. Accordingly, I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application is granted. The tenancy will continue until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 10, 2023

Residential Tenancy Branch