



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING FURNISHED SUITES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, PSF, LRE

Introduction

The Tenant filed an Application for Dispute Resolution on October 14, 2022, seeking an order cancelling the One Month Notice to End Tenancy for Cause (the “One-Month Notice”), the Landlord’s provision of services/facilities, and a restriction/set conditions on the Landlord’s right to enter the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 20, 2023.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Preliminary Matters

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

The matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord. Therefore, I dismiss the Tenant’s claim for the Landlord’s provision of services/facilities, and restriction/set conditions on the Landlord’s right to enter the rental unit. The Tenant may re-apply on these issues.

Issues to be Decided

Is the Tenant entitled to cancellation of the One Month Notice to End Tenancy?

Should the Tenant be unsuccessful in cancelling the Notice, is the Landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Background and Evidence

In their evidence the Landlord provided a copy of the original tenancy agreement for this tenancy that started on June 1, 2018. At the time of this hearing, the rent was \$853 per month. The Landlord who attended the hearing provided that they came into this tenancy in January 2021, with an ownership change around that time.

The Tenant provided a copy of the One-Month Notice document signed by the Landlord on October 6, 2022. The Landlord served this document to the Tenant by attaching it to the door of the rental unit and the Tenant stated they received this document on October 7.

This gave the move-out date of November 30, 2022. On page 2 of the document, the Landlord provided the single reason they issued this document: Tenant is repeatedly late paying rent.

On page 2 of the document, the landlord provided details:

[Tenant] is late paying rent months in a row (6 out of 10 months in 2022), despite multiple notification that rent is due on the 1st day of each month.

In their evidence, the Landlord provided copies of their messages to the Tenant about rent being past due:

- February 28, 2022: the Landlord provided a summary of the previous months' deposit, advising "this will be your 2nd month of late payment" – the Landlord stated it was hard for them to keep track of the Tenant's random deposits
- March 17, 2022: Landlord inquired on an extra \$200 amount owing (the Tenant responded to say they paid this on March 21st)
- July 31, 2022: the Landlord inquired on payment of August 2022 rent

- August 15, 2022: the Tenant advised the Landlord they paid the remainder of the August 2022 rent
- August 29, 2022: the Tenant notified the Landlord they wished to pay a part of the September rent, with the remainder to be paid by September 17, 2022
- August 31, 2022: Tenant advised, as per the Landlord's query, that this was the 3rd time paying rent late in 2022, so "it will be my last time this year."
- September 5, 2022: the Landlord advised the Tenant that they were "above 3 month's late". The Landlord acknowledge the Tenant was always letting them know, and "good on your words", but late rent payments require a report to the owners
- October 3, 2022: Landlord queried on rent, and Tenant responded same day saying "Just transferred my rent"
- October 7, 2022: Landlord advised they are "missing part 2 of October rent", stating rent is due on the 1st day of each month, and "any subsequent rent should be sent the following business day" – Tenant advised they had overpaid the previous month to which the Landlord agreed

The Tenant in their evidence for this hearing provided the same email records. The Tenant also produced a record from their bank showing payments to the Landlord on miscellaneous dates. As well, the Tenant produced rent receipts from 2018, 2020 and 2021."

In the hearing the Landlord stated that the rent amount of \$837 must be paid on the 1st of each month. Throughout 2022 the Tenant was "always kind of late – staggered – so constantly the Landlord is needing to check". They stated that according to the Residential Tenancy Branch, if the record shows that the Tenant was late three times, then the Landlord has the right to evict. They cited August, September, and October 2022 as three consecutive times that the Tenant was late in 2022.

Since the Landlord served the One-Month Notice, the Tenant was on time paying each subsequent monthly rent, for November, December, and January.

In the Tenant's Application they completed for this hearing, they wrote: "Landlord gave permission to pay rent late on several occasions in my 5 year tenancy. When October/22 rent was stolen from me I couldn't pay full amount."

In the hearing, the Tenant stated that staggered payments were not a problem in the past. They stated their routine was to check with the Landlord first, and this particular Landlord "okayed it each time, this became a habit. . ." This Tenant finds it hard to budget with bills and the timing of their income payments to them.

The Landlord redirected to say that accepting payments in this fashion from a Tenant was not “granted permissions” as stated by the Tenant. They have to accept payments; however, this makes for a lot of work having to report out on late payments received. As well, they are having to “chase” the Tenant for payments throughout each successive calendar month.

Analysis

The *Act* s. 47 states, in part:

(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

The *Act* s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to s. 47 and I find the Tenant applied within the required time period to formally challenge the One-Month Notice.

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

Based on the evidence and testimony before me, I find the Landlord has not met the burden of proof in this dispute resolution process.

Both parties submitted the email exchanges between the parties. This definitely shows the pattern of the Landlord inquiring on rent amounts, and the Tenant notifying the Landlord about their late payments, dates of deposits, and providing reasons why payments for each calendar month were staggered.

I find the Landlord provided insufficient evidence of actual late payments for a series of months within a reasonable amount of time. I cannot understand the majority of the parties’ discussions in emails that are printed out randomly, nor in a proper date order to show a pattern of late payments. The dialogue is random and out-of-sequence. This is not sufficient evidence to show that the Tenant definitely paid rent late over a period of time. What would be more useful is a rent ledger or other record showing, month-by-

month, the record of rent received. I cannot glean a pattern, of such sufficient conviction, to show that the tenancy must end for this reason. The evidence is not precise enough for me to grant an end to this tenancy, which is a matter of serious human consequence.

I glean from the Tenant's evidence, which consisted of random rent paid receipts, that a pattern of partial payments was in place for quite some time. There was no record of the Landlord previously seeking to end the tenancy for this payment pattern, and with this in place for quite some time, the need for a clear record showing the pattern – with precision – is fundamentally important.

In sum, there is no tangible evidence of late payments made over a significant period such as to form the basis to end the tenancy.

With the single ground indicated on the One-Month Notice note met with sufficient evidence by the Landlord in the hearing, I cancel the One-Month Notice for this reason. My consideration here is whether the Landlord had valid reasons for issuing the One-Month Notice in an attempt to end the tenancy; I find they did not for the chief reason of lack of evidence.

Conclusion

For the reasons above, I order that the One-Month Notice issued by the Landlord on October 6, 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: January 23, 2023

Residential Tenancy Branch