



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dogwood Holdings Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC; OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenants attended (“the tenant”). The agent ST attended on behalf of the landlord (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. No issues of service were raised. I find the landlord served the tenant as required under the *Act*. I find the tenant served the landlord as required under the *Act*.

Preliminary Issue

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Settlement Discussions

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties had several opportunities to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed them I make my Decision after the hearing and not during the hearing. I informed the tenant of the possible consequences of this hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

Withdrawal of Claims

The landlord withdrew the request for a Monetary Order which is dismissed without leave to reapply.

Recording

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a One Month Notice?

Is the landlord entitled to an Order of Possession and an order for reimbursement of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted.

The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	monthly
Beginning Date	January 1, 2021
Rent payable on first of month	\$1,570.00
Security deposit	\$775.00, held by landlord
Pet deposit	none
Arrears of Rent	none

The parties agreed the tenant did not pay the rent when due on September 1, 2022.

They agreed the landlord issued and served a 10 Day Notice, a copy of which in the RTB form was submitted, as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	September 7, 2022
Effective Date of Notice	September 20, 2022
Date and Method of Service	September 7, 2022, by posting to the tenant's door
Effective Date of Service	September 10, 2022
Reasons for Issuance	Failure to pay rent due September 1, 2022
Application for Dispute Resolution filed	No Application for Dispute Resolution filed
Rent paid	Outside 5-day period, on September 26, 2022
Use and Occupancy	All rent payments accepted after service were for use and occupancy only

The parties also agreed the landlord issued and served a One Month Notice in the RTB form, a copy of which was submitted, as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	September 8, 2022
Effective Date of Notice	October 31, 2022
Service	September 13, 2022, acknowledged by tenant
Reasons for Issuance	Repeated failure to pay rent on time

Application for Dispute Resolution filed	September 15, 2022
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The parties agreed the tenant was late in paying rent from September 2021 to September 2022 for the months of February, March and September 2022.

The tenant stated that they had explained to the landlord that the late payments were beyond their control. They stated they had informed the landlord of the circumstances and understood the landlord would forgive the late payments. They said the unit was the best housing available for their family. The tenant requested the application for the Order of Possession be denied.

The landlord denied they agreed to late payments or that it was acceptable that the tenant pay late. They requested an Order of Possession effective on 2 days notice.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Ten-Day Notice

I find the tenant, as acknowledged, was served with the 10 Day Notice effective September 10, 2022 in accordance with the *Act*. I find the form and content of the 10 Day Notice complies with section 52 of the *Act*.

I find the tenant, as acknowledged, owed \$1,570.00 in rent at the time the Notice was issued. Both parties agreed the tenant did not pay the rent within 5 days nor did they file an Application for Dispute Resolution.

I find the tenant did not dispute the Notice. I find the tenant at the hearing did not provide a credible or valid dispute to the landlord's application.

A tenant is required to pay rent when it is due. Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owed the rent claimed when the Notice was issued, and the tenant did not pay the outstanding amount nor file a dispute within 5 days.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit.

The tenant remains in the unit.

I find the tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and the tenant has not applied to dispute the Notice, I must grant the landlord an Order of Possession.

Based on the uncontradicted testimony and documentary evidence of the landlord, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, effective two days after service on the tenant.

This Order of Possession may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord is successful in this application, the landlord is entitled to reimbursement of the filing fee under section 72 which they may deduct from the security deposit on a one-time basis only.

One Month Notice

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the Residential Tenancy *Act*, which can include the reason(s) for issuing it.

I have reviewed the One Month Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The tenant's position is that the landlord agreed not to enforce the Notice as the tenant provided an explanation for the late payments. The landlord denied the tenant's assertion.

I refer to *Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent*, which states, in part:

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 this case, the landlord did not fail to act in a timely manner after the most recent late rent payment, and therefore, I do not determine that the landlord has waived reliance.

The tenancy agreement specifies that rent is due on the 1st day of each month.

The Residential Tenancy Act states:

26 (1) 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.

Three late payments are the minimum to justify repeated late rent. The tenant does not dispute that rent has been paid late on more than the 3 occasions in the year immediately preceding the issuance of the Notice as testified by the landlord.

Based on the uncontradicted testimony and documentary evidence of the landlord, I accept the landlord’s evidence and find that the tenant has been repeatedly late paying rent, and I dismiss the tenant’s application to cancel the Notice.

The Act also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form.

Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord on 2 days Notice.

However, as I have already granted an Order of Possession under the 10 Day Notice, I find no duplicate Order of Possession is necessary.

Conclusion

The tenant's claims are dismissed without leave to reapply.

The landlord is granted an Order of Possession under the 10 Day Notice and the One Month Notice effective on 2 days notice. Only one Order of Possession will be issued.

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: January 31, 2023

Residential Tenancy Branch