



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenants' application was filed within the time period required under the Act.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee?

Background and Evidence

The tenancy began October 1, 2013. The current monthly rent is \$2215.77. As of October 1, 2022 the rent is payable on the 1st day of each month. Prior to that it was payable on the 1st and 15th of each month.

The landlord served the tenants with a One Month Notice on August 22, 2022. The One Month Notice is dated August 20, 2022 and had an effective date of September 30, 2022. The One Month Notice was issued on the grounds that the tenants are repeatedly late paying rent.

The landlord submitted a spreadsheet of rent payments dating back two years as well as screenshots of the e-transfers. The landlord submits that the tenants have been late

paying rent multiple times as per the spreadsheet. The landlord submits that he has also had to request utilities payments from the tenants' multiple times and submitted a couple of e-mails in support.

The tenant does not dispute the frequent late rent payments but submits that majority of times the rent was only one or two days late and this was just the norm over the years. The tenant submits that there were many examples when the landlord did not even accept the e-transfers until days after they were sent. As for the utilities, the tenant submits that the landlord did not provide utilities bills on a regular basis, and they would only receive them once or twice in an entire year. The tenant further argues that this is the first they have ever heard of there being an issue with late rent payments over the past 9-10 years of the tenancy. The tenant argues that this has nothing to do with late rent but rather the landlord wants to obtain market rent for the unit. The tenant submits the landlord first told them to vacate as he was going to sell the house and only after it didn't sell, they were served with the One Month Notice.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement.

Although the evidence supports that the tenants were late paying rent on a regular basis over the past two years, I find that there was insufficient evidence that the landlord ever raised this as an issue with the tenants. There was no evidence of any 10 Day Notices to End Tenancy for failure to pay rent being issued to the tenants over this period. There was no evidence of any warnings being given to the tenants or evidence of correspondence indicating the late payments were not acceptable. In absence of this

evidence, I find the landlord's inaction constitutes an implied waiver of the formal rent due dates as per the tenancy agreement.

In regards the alleged late utilities payments, I find there was insufficient evidence that the landlord regularly provided utilities bills to the tenants for payment. Additionally, I find there is insufficient evidence that the landlord provided the tenants with 30 day written demand notices for the payment of utilities which is a requirement before utilities can be considered outstanding or late rent as per section 46(6) of the Act.

I find that the landlord has not provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of repeated late payments.

I allow the tenants' application to cancel the landlord's One Month Notice, dated August 20, 2022, which is hereby cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenants' application to cancel the landlord's One Month Notice, dated August 20, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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 *Residential Tenancy Act*.

Dated: January 06, 2023

Residential Tenancy Branch