



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by a support worker ("**KB**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package. However, the tenant did not serve the landlord with her supporting evidence. As such, I exclude the tenant's evidence package from the hearing. The landlord testified, and the tenant confirmed, that the landlord served the tenant with her documentary evidence. I admit these documents (which include all the documents in the tenant's evidence package) into evidence.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

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 tenant and the prior owner of the rental unit entered into a tenancy agreement in 2017. The landlord and her ex-spouse purchased the rental unit in 2018. The parties signed a new tenancy agreement on April 27, 2018 for a fixed term ending October 27, 2019. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is \$1,100 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$550, which the landlord continues to hold in trust for the tenant. On December 2, 2022, the tenant paid the landlord a \$200 pet damage deposit.

The landlord testified that the tenant was repeatedly late in paying rent from much of 2022. She testified that during the course of the tenancy she maintained records of the payments and credits to the tenant's account. I have reviewed these records and understand them to show the following debits and credits:

Date	Owed	Paid	Balance
1-Dec-21	\$1,100		\$1,100
1-Dec-21		\$600	\$500
29-Dec-21		\$600	-\$100
1-Jan-22	\$1,100		\$1,000
7-Jan-22		\$300	\$700
21-Jan-22		\$700	\$0
1-Feb-22	\$1,100		\$1,100
24-Feb-22		\$1,100	\$0
1-Mar-22	\$1,100		\$1,100
8-Mar-22		\$800	\$300
28-Mar-22		\$200	\$100
1-Apr-22	\$1,100		\$1,200
14-Apr-22		\$600	\$600
26-Apr-22		\$600	\$0
1-May-22	\$1,100		\$1,100
26-May-22		\$700	\$400
26-May-22		\$500*	-\$100
1-Jun-22	\$1,100		\$1,000
1-Jul-22	\$1,100		\$2,100
14-Jul-22		\$1,000*	\$1,100
1-Aug-22	\$1,100		\$2,200
4-Aug-22		\$2,500	-\$300
1-Sep-22	\$1,100		\$800
23-Sep-22		\$700	\$100
1-Oct-22	\$1,100		\$1,200
1-Nov-22	\$1,100		\$2,300
14-Nov-22		\$2,200	\$100
1-Dec-22	\$1,100		\$1,200
2-Dec-22		\$1,100**	\$100
26-Dec-22		\$600	-\$500
1-Jan-23	\$1,100		\$600
3-Jan-23		\$1,100	-\$500

1-Feb-23	\$1,100		\$600
1-Feb-23		\$1,100	-\$500
		Total	-\$500

* Credit to tenant's account for services rendered

** Excluding payment of pet damage deposit

On February 3, 2022, the tenant asked if she could pay her monthly rent in installments on the 8th and 23rd of each month. The landlord agreed via text message. At the hearing, the landlord stated that this arrangement was not meant to be permanent. In any event, she stated that the tenant did not adhere to this agreement, and simply paid rent when she was able. On October 2, 2022, the landlord rescinded this arrangement via text message stating that rent was due on the first of the month and demanding payment immediately.

On October 9, 2022 the landlord placed the Notice in the tenant's mailbox. The tenant disputed the Notice on October 20, 2022.

In December 2022, the tenant attempted to pre-pay one year's rent (her father had sold his business and had the funds available). However, the landlord refused.

The tenant does not deny that she paid rent as indicated by the landlord. She accepted responsibility for this and testified that she was experiencing difficult financial circumstances as her son had moved out so she was receiving less in child support payments and that she was on worker compensation. She testified that her young daughter continues to live with her. She testified that she cannot afford anywhere else to live in the area and if the tenancy was ended she would be homeless.

Analysis

Section 47(1)(b) of the Act states:

Landlord's notice: cause

47(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;

Residential tenancy Branch (the "**RTB**") Policy Guideline 38 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.

Based on the undisputed evidence, I find that the tenant has been late paying her rent (whether the rent is due on the 1st day of the month, or half on the 8th day of the month and half on the 23rd day of the month) more than three times prior to the landlord issuing the Notice. The landlord acted promptly after a late payment in issuing the Notice.

I do not find that the tenancy was re-instituted by the landlord accepting monthly rent payments. Her desire for the tenancy to end was clear due to her refusal to accept the tenant’s offer to pre-pay one year’s rent.

As such, I find the Notice was issued for a valid reason.

I have reviewed the Notice and find that it complies with the form and content requirements of section 52 of the Act.

Accordingly, I dismiss the tenant’s application to cancel it. As such, pursuant to section 55(1) of the Act, I grant the landlord an order of possession.

The Act does not provide any hardship provision by which I could cancel the Notice and allow the tenancy to continue due to the tenant’s personal circumstances. However, RTB Policy Guideline 54 provides an arbitrator with the discretion to consider such circumstances when determining the effective date of the order of possession. In light of the fact that the tenant has resided in the rental unit for six years, that she currently has a \$500 credit in monthly rent, that she is a single mother with a young child in her care, and that the tenant acknowledged and accepted responsibility for her breach of the Act, I find that a reasonable effective date for the order of possession is April 30, 2023 at 1:00 pm. The tenant must continue to pay rent until this date.

Conclusion

I dismiss the tenant’s application, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by April 30, 2023 at 1:00 pm.

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: March 1, 2023