



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FF

Introduction

The tenant filed Application for Dispute Resolution filed under the *Residential Tenancy Act* (the “Act”) to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 15, 2022.

On January 6, 2023, the tenant’s application was heard. The tenant’s application was dismissed, and the landlord was granted an order of possession.

On January 8, 2023, the tenant file an application for review consideration which was granted on the basis that the tenant wase unable to attend and this matter was sent back for a new hearing. Schedule for today, March 6, 2023 at 9:30am.

Review of director's decision or order

82 (1)Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2)The director may conduct a review

- (a)based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,
- (b)by reconvening the original hearing, or
- (c)by holding a new hearing.

(3)Following the review, the director may confirm, vary or set aside the original decision or order.

Only the landlord appeared. The tenant did not appear, although they were clearly aware of the hearing as it was scheduled to be heard at their request.

Issue(s) to be Decided

Should the original Decision and Order be confirmed, varied or set aside?

Background and Evidence

The landlord's agent testified that nothing has changed since the original hearing and the evidence would be the same.

At the original hearing the testimony of the landlord was as follows:

"This tenancy commenced on November 1, 2018 and is month-to-month. Rent is currently \$2,537.00 due on the first day of each month. The Tenant paid a security deposit of \$1,250.00. A copy of the tenancy agreement has been submitted into evidence.

A copy of the One Month Notice is also submitted into evidence. It is signed by JY on behalf of the Landlord and has an effective date of December 31, 2022. It states the reason for issuing the notice is that the Tenant is repeatedly late paying rent. The Tenant's application indicates that the Tenant received a copy of the One Month Notice attached to the door on November 16, 2022.

MZ testified that the Tenant pays rent via e-transfer. MZ testified that the Tenant started being late with rent payments in 2019. MZ testified that they would call, text, or email the Tenant with warnings and the Tenant would pay the overdue rent.

MZ stated that in 2020, the Tenant started to ignore their communications, so the Landlord issued several 10 day notices to end tenancy for unpaid rent since that time. MZ stated that the Tenant would pay the overdue rent within 5 days of receiving such notices. MZ testified that this situation happened many times. MZ referred to copies of 10 day notices included in the Landlord's evidence, which are dated October 7, 2020, October 6, 2021, November 18, 2021, September 7, 2022, October 4, 2022, and November 3, 2022.

MZ stated the Tenant gave excuses and promised the rent would be on time, but kept being late. MZ testified that there were occasions where the Tenant paid while they were in the process of preparing a 10 day notice to end tenancy for

unpaid rent. MZ testified the Landlord was unwilling to let the situation continue, so the Landlord instructed MZ to issue the One Month Notice.”

[Reproduced as written]

The landlord’s agent testified that the tenants have now failed to pay subsequent rent for two months.

The tenants acknowledged in their application that they received the Notice on November 16, 2022. The tenants submitted their application on November 29, 2022.

The tenants further submit in their application the following details.

“We are a family of 7 and I am member of the clergy. When we did pay late it was always within the first 10 days of the month. We want to continue our tenancy. We have been paying rent in protest as the landlord would not fix certain major issues such as rodents and tried to bully us to leave”.

[Reproduced as written]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I am satisfied that based on the evidence submitted by the tenant in their application that they did not file their application to dispute the Notice within the statutory time limit. The tenant received the Notice on January 16, 2022, and their last day to make their application was November 28, 2022. The tenant filed on November 29, 2022, outside the statutory time limit.

Section 47(5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Further, the tenant acknowledged paying rent late. Rent is due on the date under the terms of the tenancy agreement, not within the first 10 days. Even if the tenants did dispute the Notice within the statutory time period, which they did not, I find nothing

would change the outcome. The tenants were late paying rent on at least three occasions.

Therefore, I find it appropriate to confirm the original Decision and Order of Possession, made on January 6, 2023.

Conclusion

The original Decision and Order of Possession issued on January 6, 2023, are confirmed and remain in full force and effect.

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 06, 2023

Residential Tenancy Branch