



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufacture Home Park Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and to cancel One Month Notice to End Tenancy for Cause, (the “One Month Notice”) issued on February 23, 2023.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

At the outset of the hearing the landlord indicated they were not proceeding with the Notice as the outstanding rent was paid. However, they want to end the tenancy based on the One Month Notice and seek an order of possession.

Issue(s) to be Decided

Should the One Month Notice be cancelled?

Background and Evidence

The tenancy began in 2005. Site rent in the amount of \$200.00 is payable on the first of each month.

The parties agreed that the One Month Notice was served on the tenant indicating that the tenant is required to vacate the rental site on March 31, 2023.

The reason stated in the One Month Notice was that the tenant is repeatedly late paying the rent.

The tenant testified that did apologize to the landlord when they paid the outstanding rent and then they were served with One Month Notice.

The tenant testified that they set up their auto transfer to the landlord in the wrong amount as they set it up to pay the landlord the amount of \$20.00, rather than the amount of \$200.00. The tenant indicated that they have been having difficulties because of an assault that occurred in the park.

The landlord testified that this was a problem back in June 2022 and they notified the tenant, and the problem was corrected and again started in September 2022. The landlord stated that the tenant will not answer the door or take phone calls. The landlord stated each time they try to contact the tenant by telephone it says you have to press #9, but the tenant will not answer the call.

The tenant responded they do not recall any conversation back in June 2022 about the rent. The tenant stated that they have their phone set up in such a way that all their telephone calls are recorded.

Analysis

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

How to end a tenancy is defined in Part 5 of the Act. Section 40 of the Act a landlord may end a tenancy by giving notice to end the tenancy. I find the One Month Notice complies with section 45 of the Act.

Under the Residential Tenancy Policy Guideline 38 three late payments are the minimum number to justify a notice to end tenancy under these provisions. In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent. Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has established that the tenant is repeatedly late paying rent.

In this case, the tenant has submitted a copy of the rent ledger in evidence which shows in June 2022 they only paid the landlord \$20.00 for rent. This supports the landlord submission that they had contacted the tenant because for the next two months the tenant paid the proper amount of rent in the amount of \$200.00.

The rent ledger then shows that in September 2022 the tenant then only paid the landlord the amount of \$20.00 and this amount was paid for the next six months. I cannot find this to be an unforeseeable bank error as it was not made by the bank.

The tenant has full control of their bank account and should have known the amount that was taken from their account as they were the one, either setting up the auto payment or sending the payment. Further, I find it would be reasonable that the tenant would be monitoring their bank account especially since this was a prior issue. I find the tenant has been repeatedly late paying rent. Therefore, I dismiss the tenant's application to cancel the One Month Notice.

As I have dismissed the tenant's application, I find I must uphold the Notice and grant the landlord an order of possession.

At the hearing, the landlord indicated that they would give the tenant until June 30, 2023, if the One Month Notice was upheld. I find that is reasonable and for the sole benefit of the tenant. Therefore, I grant the landlord and order of possession, pursuant to section 48 of the Act, effective at **1:00PM on June 30, 2023**. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Should the tenant fail to pay rent for any of the remaining months of the tenancy. The landlord is entitled to end the tenancy earlier by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed.
The landlord is granted an order of possession.

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 28, 2023

Residential Tenancy Branch