



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OPC, FFL

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a One-month Notice to End Tenancy for Cause, issued on or about 1 December 2022 [the 'Notice'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords also applied to the RTB for Dispute Resolution. They ask me for the following orders against the tenants.

1. An order of possession excluding the tenants by virtue of the Notice.
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 21 April 2023, along with an advocate. The tenants also appeared, along with an interpreter.

Issues to be Decided

Should I cancel the Notice? Or should I uphold the Notice, and end the tenancy?

Should the landlords reimburse the tenants for the fee to file their application? Or should the tenants reimburse the landlords for the fee to file *their* application?

Background and Evidence

The parties agreed that, as part of their tenancy agreement, rent is due on the 15th day of each month.

The landlords told me that the tenants have been late paying their rent. Specifically, the landlords said that the tenants paid rent:

- one day late for August;
- four days late for September (and not in the full amount); and
- one day late for October; and
- on time for November, but \$100.00 short.

The landlords corroborated their evidence of the timing and amount of these payments with screen shots of e-transfers from the tenants to the landlords.

The tenants told me the following about the at-issue payments:

- they paid August rent on time, on 15 August;
- they did not pay September rent on time, nor in the full amount, because of a repair they made to the unit, which they said was an emergency repair;
- they paid October rent on time, on 15 October; and
- they paid November rent on time, and \$100.00 short, pursuant to an RTB order permitting them to withhold that amount from her rental payment.

During the hearing, the landlords conceded that the tenants were empowered to withhold \$100.00 from November's rent.

The tenants corroborated their testimony of their October rent payment with a screenshot indicating that they paid rent *via* an e-transfer that was automatically accepted by the landlords on 15 October [the 'E-transfer']. The landlords confirmed that the e-mail address depicted on this screenshot was their e-mail address.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

RTB Policy Guideline 38: 'Repeated Late Payment of Rent' is relevant to this dispute. It says, in part, that, 'Three late payments are the minimum number sufficient to justify a notice under these provisions.' And the landlords in this dispute have alleged three late payments: August, September and October.

The tenants concede that they paid September's rent late. But what of August and October?

The landlords' evidence is that the tenants paid those two months' rent the day after it was due. But the tenants' evidence is that they paid those two months' rent on the day it was due.

I find the evidence of the E-transfer helpful in balancing the probabilities of whether the tenants paid rent on time. The E-transfer shows October rent being automatically accepted by the landlords on time, on 15 October. The landlords' records show that payment not 'arriving' until the next day.

Considering this evidence, I find it probable that the tenants paid the October rent on time, but that the landlords' bank did not process the payment until the next day.

Having found this, the landlords are left with only two late payments, which the guideline above suggests is insufficient to support an end of tenancy for late payment of rent. But even without a screenshot of the tenants' August payment, I find it probable (based on the E-transfer) that they also paid August's rent on time, and that the landlords' bank did not process that payment until the next day – just as with October.

This leaves one late payment: September. The tenants conceded this was late. But that single late payment is insufficient to justify the Notice.

Conclusion

Of the three rent payments alleged to have been late, I find that two were on time. And a single late payment cannot justify an end to a tenancy. Therefore, I grant the tenants' application and cancel the Notice.

As I have cancelled the Notice, I also dismiss the landlords' application, without leave to reapply.

I authorise the tenants to reduce their next rent payment by \$100.00, to compensate them for the cost of filing this application.

I make this decision on authority delegated to me by the Director of the RTB under section 9.1(1) of the *Residential Tenancy Act*.

Dated: 28 April 2023

Residential Tenancy Branch