



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FFL
 CNC, DRI, RPP, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords Application for Dispute Resolution was made on March 9, 2023. The Landlords applied for an order of possession to enforce a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated February 21, 2023, and to recover the cost of filing the application.

The Tenant’s Application for Dispute Resolution was made on March 6, 2023. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued June 30, 2020, to dispute a rent increase that is above the amount allowed by law, for an order that the Landlord return their personal property, for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement, and for the return of their filing fee.

The Landlords’ Agent and the Landlords’ Daughter (the “Landlord”) as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence

submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – *Related Issues*

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claims to dispute a rent increase that is above the amount allowed by law, for an order that the Landlord return their personal property, and for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement,

I will proceed with this hearing on the Tenant's remaining claims before me.

Issues to be Decided

- Should the One-Month Notice dated February 21, 2023, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on May 1, 2018, as a fixed-term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed-term. Rent in the amount of \$1,800.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$900.00 and at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on February 21, 2023, by Canada Post Registered mail. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenant must move out of the rental unit by March 31, 2023. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord and the Tenant submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant has been late in paying their rent ten times in the year before issuing their Notice, March, April, May, June, July, August, October, and December 2022, as well as January and February 2023. The Landlord requested an order of possession to enforce their notice to end tenancy.

The Tenant testified that the Landlord has always allowed them to pay their rent late, throughout their tenancy, and that for years there was no problem with the late payment of rent.

The Landlord's daughter testified that the Tenant has always paid their rent late, and that at first, they did not mind as the Tenant was very helpful to them, but that they always told the Tenant that the rent should be paid as of the first day of each month. The Landlord's daughter confirmed that the Landlord had never issued a 10-day notice for non-payment of rent to the Tenant, nor had they taken any previous action to enforce this term in their tenancy agreement.

Analysis

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

Pursuant to the deemed received provision set out in section 90 of the *Act*, I find that the Tenant received the Notice on February 26, 2023, five days after it was mailed by the Landlord. Pursuant to section 47 of the *Act*, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Therefore, I find the Tenant had until March 8, 2023, to file their application to dispute this Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on February 6, 2023, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In this case, I accept the agreed-upon testimony of these parties that the Tenant has paid their rent late ten times in the last twelve months.

However, I must consider the submission of the Tenant that the Landlord had created a history of accepting the late rent payments for years without taking any action to enforce the due date set out in their tenancy agreement.

I accept the testimony offered by the Landlord, that the Tenant has a long history of paying their rent late, going back to when this tenancy began in May 2018, over four years ago.

Due to the length of time, four years, and 10 months, in which this Landlord has accepted late payment of rent from this Tenant without taking any legal action to

enforce the rent due date set out in the tenancy agreement. I find that the legal principle of estoppel now applies to the rent payments for this Tenancy. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, I find that the Landlord established a pattern of not enforcing the rent due date of the first of each month for this tenancy and that the Tenant relied on this pattern over the past four years and 10 months. Therefore, I find that the is required to give the Tenant written notice of their intention to now strictly enforce the rent due date contained in the tenancy agreement for this tenancy.

Consequently, I find the Notice dated February 21, 2023, is of no effect and that this tenancy continues until it is ended in accordance with the *Act*.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their application.

As the Tenant has been successful in their application to cancel this Notice, I find that the Tenant is entitled to the recovery of the filing fee they paid for these proceedings. I grant permission to the Tenant to deduct this \$100.00 award from a future month's rent.

Conclusion

I dismiss the Landlord's application for an order of possession and find that the One-Month Notice dated February 21, 2023, is of no effect under the *Act*.

The grant the Tenant's Application to cancel the One-Month Notice, February 21, 2023, and I find the Notice is of no effect under the *Act*.

I grant the Tenant permission to deduct **\$100.00** from a future rent payment, in the recovery of the filing for they paid for these proceedings.

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: May 3, 2023

Residential Tenancy Branch