



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes CNC, DRI-ARI-C, RP, AS, FFT

Introduction

The Tenants seek an order canceling a *One Month Notice to End Tenancy for Cause* (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (the “Act”). The Tenants seek recovery of the application fee under section 72 of the Act.

They also sought additional relief under sections 43 (dispute of a rent increase for additional capital expenditures), for repairs, and for permission to sublet. Having reviewed these claims I find that they are unrelated to the primary claim to cancel the Notice and as such they are dismissed with leave to reapply.

Issues

1. Are the Tenants entitled to an order canceling the Notice?
2. If not, is the Landlord entitled to an order of possession?
3. Are the Tenants entitled to recover the application fee?

Evidence and Analysis

In reaching this decision, I have only considered relevant and necessary oral and documentary evidence that helped resolve the issues of the dispute.

The tenancy began in December 2021. Rent was \$2,600 until the end of 2022 and on January 1, 2023, the rent increased to \$2,652. Rent is due on the first day of the month. The written tenancy agreement was in evidence.

The Landlord’s agent (hereafter the “Landlord” for brevity) testified under oath that they served the Notice on the Tenants by pre-agreed email on February 6, 2023. A copy of the Notice was in evidence and, as testified to by the Landlord, it was issued on the ground that the Tenants have repeatedly paid rent late.

The Landlord testified that the Tenants were late paying rent for March, April, July, and September 2022 and for January 2023. Five *10 Day Notice to End Tenancy for Unpaid Rent* (the “10 Day Notices”) were issued for each of these months, on March 4, April 6, July 7, September 7, and January 5. The 10 Day Notices were in evidence.

Last, the Landlord testified that, while in the past the owner has been forgiving with the Tenants’ late rent payments, January’s rent was significantly late, and the owner was quite stressed about making their mortgage payment. As such, the owners directed that the Landlord issue the Notice.

The Tenants testified that previously they had discussions with the Landlord about late rent and that it was “okay.” One of the Tenants is a soccer coach, and that they got paid on the seventh day of the month. Thus, it was difficult to pay rent on the first day of the month. That, and they had difficulty getting their team to pay them on time. They finally got this late payment issue fixed in December.

The Tenants argued that the owner only issued the Notice after the Tenants did not respond (or respond quickly enough) to a proposed rent increase from the owner. They argued that the Notice was, in their opinion, issued in bad faith, and that it had nothing to do with the purported late payments.

Under section 47(1)(b) of the Act a landlord may issue a *One Month Notice to End Tenancy for Cause* when a tenant is repeatedly late paying rent. *Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent* states that three late payments are the minimum number to justify a notice under these provisions. Further, the policy states that “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.”

Taking into careful consideration all the relevant oral and documentary evidence before me, it is my finding that the Landlord has proven on a balance of probabilities that the Notice was issued for a valid and provable ground. Namely, repeated late payment of rent. As such, the Tenants’ application to cancel the Notice is dismissed and the Notice is upheld. Having reviewed the Notice it is my finding that it complies with section 52 of the Act in form and content requirements.

While the Tenants may not have agreed to a proposed rent increase from the Landlord, this issue is, I find, unrelated to the Notice being issued. The oral and documentary evidence regarding the repeated late payment of rent is sufficient to uphold the validity of the Notice.

Pursuant to section 55(1) of the Act the Landlord is granted an order of possession. A copy of the order is issued with this Decision to the Landlord, who must serve a copy of the order upon the Tenants. The tenancy shall end on June 30, 2023, and the order of possession effective date reflects this date.

The application to recover the cost of the application fee is dismissed.

Conclusion

The application is hereby dismissed with and without leave to reapply.

The Landlord is granted an order of possession effective June 30, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 10, 2023

Residential Tenancy Branch