



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause, (the "Notice") issued on May 8, 2023; and
2. To recover the cost of filing the application.

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

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require 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. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on January 15, 2020. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00.

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2023. The tenant disputed the Notice within the statutory time limit. The reason stated in the Notice was that the has been repeatedly late paying rent.

The landlord testified that the tenant has been consistently late with rent for March, April and May 2023.

The tenant testified that there was a flood in their rental unit at the end of December 2022. To which the landlord's and their insurance company were working out the details. The tenant stated that their bathroom, laundry room and bedroom were all impacted, and they ended up displaced and had to move-out of the premises for a six-week period from approximately March 15 to May 1, 2023. The tenant that the late payments of rent were due to the flood and that they have always been a good tenant.

The landlord acknowledge there was a flood; however, they believe the tenant was only required to vacate for 2 weeks.

Analysis

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

The Residential Tenancy Policy Guideline 38 states three late payments are the minimum number sufficient to justify ending the tenancy under the Act. However, in exceptional circumstance the reasons for the lateness may be considered by the arbitrator in determining whether a tenant has been repeatedly late paying rent.

In this case, there was flood in the rental unit in late December 2022. The tenant's insurance company was working with the landlord's insurance company. The tenant remained in the rental unit until the tenant's insurance company paid to relocate the rental for a period of time. I find it highly unlikely that an insurance company would relocate a tenant if the rental unit was liveable.

While I accept the tenant was late with rent for March, April and May 2023; however, I find it very heavy handed of the landlord not to take into consider the tenant's loss of use of space and circumstances regarding the flood, which was not the fault of the tenant. This eventually displaced the tenant. Therefore, in this circumstance, I find the late payments of rent for March, April and May 2023 are excluded.

Based on the above, I find it appropriate to cancel the Notice. The tenancy will continue.

As the tenant was successful with their application, I find the tenant is entitled to a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

As the landlord was unsuccessful with their application, I decline to award the landlord the cost of their filing fee.

Conclusion

The tenant's application to cancel the Notice is granted. The tenant is entitled to a onetime rent reduction of \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

The landlord's application is dismissed.

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: July 13, 2023

Residential Tenancy Branch