



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession based on a One Month Notice to End Tenancy for Cause, (Notice) issued on April 13, 2023; and
2. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel the Notice;
2. To suspend or set conditions on the landlord's right to enter the rental unit;
3. To be allowed to change the locks to the rental unit; and
4. To have the landlord comply with the Act.

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.

The parties confirmed they have received the other parties' evidence.

Preliminary Issues

I note in the landlord's application that stated the tenant did not dispute the Notice within the statutory time limit. However, the tenant received the Notice on April 13, 2023, and filed their application on April 18, 2023. I find the tenants did file their application within the statutory time limit.

In this case, the parties were at a prior hearing, relating to another One Month Notice to End Tenancy for Cause, issued on December 22, 2022. The reason listed was the tenant had been repeatedly late paying rent. At the hearing held on February 1, 2023, the parties entered into a settlement agreement to continue the tenancy. I find I am not prepared to consider any late payments of rent that occurred in 2022 as that matter was settled and a final decision was made. I will only consider if there any late payment for January, February, March and April 2023.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice. The balance of the tenants' application is dismissed, with leave to reapply.

Issue to be Decided

Should the Notice be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on July 1, 2021. Rent in the amount of \$1,220.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00.

The Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on May 31, 2023. The reason stated in the Notice was that the tenants have been repeatedly late payment of rent.

The landlord testified that they received February 2023, rent on February 7, 2023, by etransfer and issued a receipt. I note the receipt filed in evidence says it was received on February 8, 2023.

The landlord testified that they received March 2023, rent on March 14, 2023, by a cheque given by a third party and it was short \$20.00. The landlord testified that they received April 2023 rent on April 1, 2023; however, it was short \$20.00 and not paid until April 2, 2023.

The tenant testified that they were not late with rent for February 2023, as it was sent to the landlord on January 31, 2023, by etransfer. Filed in evidence is a copy of a document that may support this; however, it is not a copy of the etransfer being sent or a complete bank record, which I would expect to be submitted.

The tenant testified that they sent the landlord an etransfer on February 28, 2023, for March 2023 rent and they sent an email message to the landlord on March 2, 2023, asking why they have not accepted their etransfer yet. The tenant testified that they then cancelled the etransfer because they found out that a rent cheque was sent to the landlord by a third party. I note the cheque is dated March 8, 2023.

The tenant testified that the rent for March 2023, was short by \$20.00 which was paid on March 2, 2023, and acknowledge it was late.

Analysis

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

The Residential Tenancy Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

In this case, I have conflicting evidence of both parties as to when February 2023 rent was paid. The tenants' evidence was that it was paid on January 31, 2023, and provided a document which may or may not be genuine, as it is not on official bank statement. The landlord's evidence was that rent was received on February 7, 2023. However, no copy of the etransfer was provided by the landlord to show when it was **sent by the tenants**. I have insufficient evidence from the landlord to disprove the tenants' evidence. Further, the landlord receipt is dated February 8, and not consistent with their testimony which was said to have been paid on February 7, 2023. Therefore, based on the evidence before me, I cannot find the tenants were late paying February 2023, rent.

However, the tenant provided no proof they sent the landlord rent for March 2023 by etransfer on February 28, 2023, as claimed. I would expect to see a copy of the etransfer and a copy of the etransfer history from their bank.

The tenants filed in evidence emails that they claimed to have sent to the landlord asking the landlord why they have not accepted rent for March 2023; however, it appears that email address may not be correct as it shows the ending or domain as: ivloud.com. This may be an attempt to mislead evidence and I question the validity of the email.

Further, the rent was sent by a third party by cheque that is dated March 8, 2023, and was not dated for March 1, 2023, nor March 3, 2023, the date the tenants indicated in the emails, which I have already questioned the validity of the emails. It would make no sense for a third party to be send a cheque for rent dated March 8, 2023, if the tenants had the rent money as indicated. I find the tenants were late paying rent for March 2023.

The tenants admitted all rent was not paid on April 1, 2023; the balance was paid on April 2, 2023. I find the tenants were late paying rent for April 2023.

Based on the above finding, **I find the tenants have been proven to have paid rent late twice for March and April 2023.** Therefore, I must grant the tenants application to cancel the Notice as three late payments is the minimum sufficient to end the tenancy.

Based on the above finding, I must dismiss the landlord's application. The landlord is not entitled to recover the cost of the filing fee.

As I have found the tenants have been late paying rent twice, which are for the months of March and April 2023. **I caution the tenants any subsequent late payment of rent will constitute a third late payment** and will be sufficient grounds to end the tenancy.

Should a future hearing be necessary the landlord can file as evidence a copy of this decision to prove, I have found the tenants have been late paying for the months of March and April 2023.

Should the tenants claim rent was sent by etransfer on the date it was due, they are to provide a copy of their etransfer history that is easily obtained from their bank as it will show when it is sent, the email address it was sent to, and the date it was accepted and deposited and will be on official bank letter head.

Conclusion

The tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act. **The tenants are cautioned that any subsequent late payment of rent will constitute a third late payment and will grounds for the landlord to end your tenancy.**

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: August 04, 2023

Residential Tenancy Branch