



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNC, FFT
 LL: OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on July 31, 2023 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause dated July 25, 2023 (the “One Month Notice”); and
- an order granting the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on August 9, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for cause based on the One Month Notice.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Applications and documentary evidence packages. The Landlord stated that while they received the Tenant’s Application, they felt as though some information was missing and that the Tenant’s evidence was not provided in the same order as it was listed in the Application.

The Landlord confirmed that they did receive the Application and was aware that the Tenant had applied to cancel the One Month Notice. The Landlord confirmed that while the evidence may not have been provided in the same order as it was listed in the Application, the Landlord was able to review, consider, and respond to the Tenant’s

evidence provided. I notified the Landlord that if there was any specific piece of evidence referred to by the Tenant that the Landlord did not receive, then we could discuss this during the hearing. I note the Landlord did not raise any further issues relating to the Tenant's evidence. I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 47 and 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2014. Currently, the Tenant pays rent in the amount of \$1,087.06, which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00, as well as a pet damage deposit in the amount of \$525.00.

The Landlord stated that the Tenant has been repeatedly late paying rent throughout the tenancy, but most recently on April, May, June, and July 2023. The Landlord testified that she served the Tenant with a One Month Notice on July 25, 2023 with an effective vacancy date of August 31, 2023, by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

The Tenant acknowledged that she has paid rent late throughout the tenancy, however, the Tenant stated that the Landlord has always accepted the late rent and that the

Landlord has never raised the issue with the Tenant. The Tenant stated that she would have provided the Landlord post dated cheques had she known that the Landlord had an issue with the late payments of rent. The Tenant confirmed that she has never been warned about the late payments. The Landlord stated that the responsibility is on the Tenant to pay rent on time and that according to the tenancy agreement, rent is due on the first day of each month.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the basis that the Tenant has been repeatedly late paying rent.

The Residential Tenancy Policy Guideline 38 states 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. 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.

The Landlord served the Tenant with a One Month Notice dated on July 25, 2023. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. In this case, I find that the Landlords accepted late rent payments throughout the tenancy and have provided insufficient evidence to demonstrate that they have cautioned the Tenant to pay on the first day of each month and that failure to do so could give the Landlord's sufficient cause to end the tenancy. I find that it is not fair, after accepting late rent without issue throughout the tenancy, to serve the One Month Notice for repeated late rent.

In light of the above, I cancel the One Month Notice, dated July 25, 2023 and order the tenancy to continue until ended in accordance with the Act. I therefore dismiss the Landlord's Application without leave to reapply.

The Tenant is now cautioned that any further late payments of rent may be considered a breach of the tenancy agreement and the Act.

While the Tenant was successful in cancelling the One Month Notice, I find that they did breach Section 26 of the Act by not paying rent when due. As such, I decline to award the Tenant the return of their filing fee.

Conclusion

The One Month Notice issued by the Landlord dated July 25, 2023 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: September 26, 2023

Residential Tenancy Branch