



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, OLC / OPC, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The landlord's application for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant's application for:

- the cancellation of the One Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$amount pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Severing

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 requires that claims in an application be related to one another. The tenant's claims for monetary compensation and an order that the landlord comply with the Act are not related to his claim to cancel the Notice. As such, I exercise my discretion under Rule 2.3, and dismiss the tenant's monetary claim and request for an order that the landlord comply with the Act, with leave to reapply.

Preliminary Issue – Identity of Landlord

On her application, the tenant identified the landlord's agent (CR) as the respondent landlord. The parties confirmed that the corporate entity named as the landlord on the landlord's application is properly the tenant's landlord, and not CR. As such, and with the consent of the parties, I amend the tenant's application to remove CR as a landlord and replace her with the corporate entity.

Service of Documents

The parties agreed that each had served the other with their respective notice of dispute resolution proceeding packages and supporting documentary evidence. I find that each has been served in accordance with the act.

Issues to be Decided

Is the landlord entitled to:

- an order of possession; and
- recover the filing fee?

Is the tenant entitled to:

- an order cancelling the Notice; and
- recover the filing fee?

Evidence and Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting April 1, 2021. Monthly rent is \$1,015 and is payable on the first day of each month. The tenant paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant.

On July 7, 2023, the landlord served the tenant with the Notice by posting it on the door of the rental unit. It specified an effective date of August 31, 2023. It listed the reason for ending the tenancy as follows:

- tenant is repeatedly late paying rent;
- breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- non compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The Notice provided further details of these reasons as follows:

Tenant has failed to abide by the tenancy agreement constantly paying rent late. Failed comply to change the lock back to the one provided. Tenant failed to comply to RTB ruling to put our lock back on.

CR testified that the tenant was late paying rent for the months of May, June, and July 2023. The landlord served the tenant three 10-day notice is to end tenancy for non-payment of rent on May 3, June 3, and July 2 respectively. During the hearing, CR consulted the landlord's "deposit report" for the tenant and testified that it shows that the tenant paid May rent on May 4, June rent on June 12, and July rent on July 7.

The tenant testified that he was late paying rent *at least* twice. He did not dispute that he received the 10-day notices set out above, or that he paid the rent on the dates CR specified. He argued that on at least one occasion, he was late paying rent because the landlord had banned him from attending the landlord's office (which is located in the residential property) and that he had to put his rent through the mail slot. He was unable to say what month this occurred in or even if it was for one of the months during which the landlord issued a 10-day notice.

Based on the undisputed testimony of CR, I accept that the landlord received the tenant's May rent on May 4, June rent on June 12, and July rent on July 7. As such, I do not find it likely that any of these payments were delayed due to the tenant having to place the mail through the mail slot. Had that been the case, I would have expected that the landlord received the tenant's rent the day after it was due, and not between 3 and 11 days after it was due as indicated on the schedule above.

I also do not find that the reason for the landlord receiving the tenants rent on the days specified above was due to the office being closed the following day after rent was due. May 1 was a Wednesday and June 1 was a Thursday. Had the landlord's received the tenant's rent late due to it being put through the mail slot after hours, I would have expected the rent payment to be recorded as received the following day (both being weekdays).

July 1 was a Saturday. CR testified that the landlord's office is open on the weekends on days when rent is due. However, if the tenant placed his rent in the mail slot after-hours on July 1, I would have expected the landlord to record it as received on July 4, the next business day the office was open, and not on July 7. As such, I find that the tenant was late paying his monthly rent for the months of May, June, and July 2023.

Residential Tenancy Branch (RTB) Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice to end tenancy for late payment of rent. Accordingly, I find that the landlord was within its rights to issue a notice to end tenancy for late payment of rent. I find that the Notice was issued for a valid reason. Is not necessary for me to evaluate whether or not the other two grounds for ending the tenancy listed on the Notice are valid. The landlord need only prove one of the grounds to end the tenancy.

I have reviewed the Notice and find that it complies with the form and content requirements set out at section 52 of the Act.

As such, per section 55 of the Act, the landlord is entitled to an order of possession. At the hearing, the CR indicated that the landlord fixed the order of possession to be effective on February 29, 2024. The tenant asked that he give given "a bit longer" but did not specify an exact date, only noting that it is difficult to move during the winter.

RTB Policy Guideline 54 sets the typical order of possession date as two days after the order has been received by the tenant. In light of this, I grant the landlord's request for the order of possession to take effect on February 29, 2024, and decline to grant any additional time.

Per section 72(1) of the Act, as the landlord has been successful in this application, I order that the tenant reimburse it the filing fee. Per section 72(2), the landlord may deduct \$100 from the security deposit in satisfaction of this amount.

Conclusion

I dismiss the tenant's application without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by February 29, 2024 at 1:00 pm.

I order the tenant to pay the landlord \$100. The landlord may deduct this amount from the security deposit.

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: November 28, 2023

Residential Tenancy Branch