



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 tenant's application filed on November 13, 2023, is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause (One Month Notice), issued on October 31, 2023; and
2. To recover the cost of filing the application.

The landlord's application filed on November 18, 2023, is seeking orders as follows:

1. For an order of possession; 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. The parties confirmed they received the other party's evidence and there was no dispute.

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 One Month Notice be cancelled?

Is the landlord entitled to an order of possession?

Is either party entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on April 1, 2022. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenant paid a security deposit of \$800.00.

The parties agreed that the One Month Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2023.

The reason stated in the One Month Notice was that the tenant is repeatedly late paying rent, and the tenant has allowed an unreasonable number of occupants in the unit.

The landlord's agent stated the following payments of rent were late.

Rent for April 2023 was paid on April 5; rent for May 2023 was paid on May 7, 2023; rent for July 2023 was paid on July 3; and rent for August 2023 was paid on August 2023.

The tenant does deny being late paying rent; however, that they pay their rent to the landlord as soon as they get the funds.

The landlord's agent argue it is the tenant's responsibility to pay rent on time as it impacts the landlord. The landlord stated at the hearing if they are successful with their application they would be agreeable to give the tenant until March 31, 2024, to vacate the property.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy. The One Month Notice filed in evidence complies with section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late paying rent.

Under the Residential Tenancy Policy Guideline, three late payments are the minimum number sufficient to justify a notice under the Act. The landlord provided four late payments of rent which the tenant admitted the rent was late. While I accept the tenant may have had to wait for their funds to arrive; however, this is not grounds not to pay rent in accordance with their agreement.

I find the One Month Notice issued is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the One Month Notice. The tenancy will end in accordance with the Act.

As the landlord agreed at the hearing to give the tenant more time to vacate, which I find is reasonable. I find it appropriate to extend the effective vacancy date in the One Month Notice to March 31, 2024, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **March 31, 2024, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

The tenant must ensure that rent for March 1, 2024, is paid on time.

I have not granted either party the cost of the filing fee. The tenant's application was dismissed, and the landlord was not required to file an application because the tenant already had filed their application and I was required under the Act, to grant the landlord an order of possession.

Although the landlord indicated a second ground in the One Month Notice to end tenancy. I found it unnecessary to consider that ground as I have ended the tenancy on the basis of repeatedly late rent payments.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed. The landlord is granted an order of possession on the above effective date. Neither party are entitled to recover the cost of the filing fee.

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: February 09, 2024

Residential Tenancy Branch