



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to Two Applications for Dispute Resolution.

The first Application for Dispute Resolution names two tenants and the landlord. In this Application for Dispute Resolution the tenant applied to cancel a One Month Notice to End Tenancy for Cause, which was posted on their door on December 05, 2023.

RP stated that on December 16, 2023, the Dispute Resolution Package for the first Application for Dispute Resolution was sent to the landlord, via registered mail. The tenant submitted Canada Post documentation that corroborates this testimony. The landlord acknowledged receipt of these documents and I find they were served in accordance with section 89 of the *Residential Tenancy Act* (Act).

The second Application for Dispute Resolution names the same two tenants and the same landlord. In this Application for Dispute Resolution the tenant applied to cancel a One Month Notice to End Tenancy for Cause, which was posted on their door on December 05, 2023.

DC stated that sometime in December of 2023, the Dispute Resolution Package for the second Application for Dispute Resolution was sent to the landlord, via registered mail. The tenant submitted Canada Post documentation which indicates registered mail was sent on December 21, 2023. The landlord acknowledged receipt of these documents and I find they were served in accordance with section 89 of the Act.

On December 13, 2023 and December 15, 2023, the tenant submitted evidence to the Residential Tenancy Branch. RP stated that this evidence was sent to the landlord, via registered mail, on December 16, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 21, 2023 the tenant submitted evidence to the Residential Tenancy Branch. DC stated that this evidence was sent to the landlord, via registered mail, with the Dispute Resolution Package. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 30, 2023 the landlord submitted evidence to the Residential Tenancy Branch. FG stated that this evidence was posted on the tenant's door on January 04, 2024. RP and DC acknowledged viewing this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

At the outset of the hearing, the landlord stated that she had a witness. The landlord was given the opportunity to call this witness during the latter portion of the hearing, at which time she declared she no longer wished to call this witness.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, dated December 05, 2023 which was served pursuant to section 47 of the Act, be set aside?

Background and Evidence

The landlord and the tenant agree that:

- this tenancy began on May 01, 2021;
- at the beginning of the tenancy, the rent was \$1,450.00;
- the rent was increased to \$1,500.00;
- the tenancy agreement declares rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause, dated December 05, 2023, was posted on the door of the rental unit;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by January 31, 2024; and
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant has been repeatedly late paying rent.

The parties agree that the rent was paid late on the following occasions:

- May of 2021, rent not paid until May 02, 2021
- June of 2021, rent not paid until June 02, 2021
- September of 2021, rent not paid until September 03, 2021
- July of 2022, rent not paid until July 02, 2022
- August of 2022, rent not paid until August 07, 2022
- July of 2023, rent not paid until July 04, 2023
- September of 2023, rent not paid until September 02, 2023
- December of 2023, rent not paid until December 06, 2023

RP stated that:

- After the tenancy agreement was signed, the landlord never informed her that rent must be paid by the first day of each month;
- Because the landlord did not comment on the many late rent payments, she assumed the landlord was being lenient and she did mind if the rent was paid late;

- The landlord did not even mention the late payments until she referred to it in a text message, dated August 06, 2022; and
- After receiving the text message of August 06, 2022, she asked the landlord to inform her if there was a future problem.

FG stated that:

- She typically did not comment when the rent was late because she was “trying to be understanding”;
- She never reminded them that rent was due by the first day of each month, as that term was included in the tenancy agreement; and
- The only time she mentioned the late rent was in the text message she sent on August 06, 2022.

DC stated that:

- He paid his rent to RP; and
- He was not aware rent was not being paid on time.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a written tenancy agreement which declares rent is due by the first day of each month.

Section 47(1)(b) of the Act permits a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

On the basis of the undisputed evidence, I find that a One Month Notice to End Tenancy for Cause, dated December 05, 2023, was posted on the door of the rental unit, which informed the tenant of the landlord’s intent to end the tenancy pursuant to section 47(1)(b) of the Act.

As the tenant often paid rent after it was due on the first day of each month, and the landlord did not raise any concerns about those late payments, I find a mutual assumption that rent was not due precisely on the first day of each month was created. In concluding that a mutual assumption was created, I was influenced by:

- RP’s testimony that because the landlord did not comment on the many late rent payments, she assumed the landlord was being lenient and did mind if the rent was paid late;
- FG’s testimony that she did not comment when the rent was late because she

was “trying to be understanding”, which infers she was not strictly enforcing the term requiring rent to be paid by the first day of each month;

- The undisputed evidence that the late rent payments were not mentioned by either party until the landlord refers to it in a text message sent August 06, 2022;
- The fact the text message of August 06, 2022 does not demand that rent be paid by the first of each month; and
- The wording of the text message of August 06, 2022, which clearly indicates leniency regarding payment dates.

I find that the tenant relied on this shared assumption and did not always pay rent by the first day of each month. As the tenant relied on this shared assumption, I find that the landlord did not have the right to end the tenancy on December 05, 2023, pursuant to section 47(1)(b) of the Act.

Residential Tenancy Branch Policy Guideline 38 stipulates, in part, that three late payments are the minimum number sufficient to justify a notice to end a tenancy for repeatedly paying rent late. This guideline does not apply to these circumstances, however, as there was a shared assumption rent did not have to be paid by the first day of each month.

As the landlord did not have the right to end the tenancy on December 05, 2023, pursuant to section 47(1)(b) of the Act, I grant both applications to cancel the One Month Notice to End Tenancy for Cause.

To provide some clarity and certainty to this tenancy going forward, I find that the landlord has now clearly declared that the landlord is relying on the term of the tenancy agreement that declares rent is due by the first day of each month. As such, I find that the tenant no longer has the right to rely on a shared assumption that rent is not due by the first day of each month.

In the event the tenant does not pay rent by the first day of each month in the future, the landlord retains the right to serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In the event the tenant pays rent late on at least three occasions in the future, the landlord retains the right to serve the tenant with another Notice to End Tenancy for late payment of rent.

Conclusion

The One Month Notice to End Tenancy for Cause, dated December 05, 2023, is cancelled and of no force or effect.

This tenancy shall continue until it is 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 *Act*.

Dated: February 29, 2024

Residential Tenancy Branch