



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to:

- Cancel a 10 Day Notice for Unpaid Rent (10 Day Notice)
- Cancel a One Month Notice for Cause (One Month Notice)
- Suspend or set conditions on the landlord’s right to enter the rental unit
- Have the landlord comply with the Act and
- Recover the cost of the filing fee.

Both parties appeared and are noted on the covering page of this Decision.

Preliminary Issues

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 10 Day Notice, One Month Notice, and the tenant’s application to recover the filing fee at these proceedings.

The balance of the tenant’s application is dismissed, with leave to re-apply, only if the tenancy should continue.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled?

Should the One Month Notice be cancelled?

Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant.

The parties agreed that the 10 Day Notice was served on the tenant on June 10, 2024, by email. The tenant paid the rent on June 17, 2024.

The parties agreed that the tenant was served with the One Month Notice, issued on June 1, 2024. The reasons for ending the tenancy within the One Month Notice is as follows:

- Tenant is repeatedly late paying rent
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk

The Landlord testified that the Tenant is late paying rent. The Landlord stated that February 2024, rent was paid on February 15, 2024, March 2024, rent was paid on March 11, 2024, April 2024, rent was paid on April 11, 2024, May 2024 rent, was paid on May 9, 2024, and June 2024, rent was paid on June 17, 2024.

The Tenant testified that they pay their rent in advance as an example February 15, rent paid was for March 2024. The Tenant stated that they never made the advance payment in May 2024, and they paid the rent for June 2024 on June 17, 2024.

The Landlord testified that is not true, that the Tenant has never paid rent in advance.

Analysis

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

The 10 Day Notice was served on the tenant by email on June 10, 2024, which the tenant acknowledge it was received and disputed the 10 Day Notice within the statutory time limit. I find the Tenant was sufficiently served. However, the Tenant was not deemed served until three days later, June 13, 2024, and paid the rent on June 17, 2024, which was within 5 days of receiving the 10 Day Notice, I find the 10 Day Notice was automatically cancelled and there was no requirement for the Tenant to dispute the 10 Day Notice.

The One Month Notice was served on the tenant by email on June 3, 2024. The Tenant disputed the One Month Notice within the statutory time limit. I find the Tenant was sufficiently served.

Three late payments are the minimum number sufficient to justify a notice to end the tenancy under section 47 of the Act.

I accept the Landlord evidence over the Tenant that the Tenant has been repeatedly late paying rent as described by the Landlord. The Tenant indicated that they always paid rent in advance; however, this does not have the ring of truth. Further, it is not supported in the details for their reasons for disputing the One Month Notice as the Tenant does not make any reference that they have always paid their rent in advance, which would have been reasonable if this was true, since the allegation is late payments of rent.

The Tenant did provide a copy of their bank statement; however, every transaction deposit, debits, withdraws or point of sales are noted is in the amount of \$600.00, which is the same amount of rent. I cannot put any weight on the bank statement, often there is no amount of \$600.00 withdrawn and other months there a multiple withdraws, which more likely than not was the Tenant catching up on unpaid rent or was for other things.

I find has been repeatedly late to pay rent. I dismiss the Tenant's application to cancel the One Month Notice. I find the Landlord is entitled to an Order of Possession.

At the hearing the Landlord stated that since the effective date of the One Month Notice has passed, that they are willing to give the Tenant until August 15, 2024, to vacate the premises. I find this is reasonable as this is for the sole benefit of giving the Tenant more time to find living accommodations. Therefore, I grant the Landlord an Order of Possession effective at **1:00 pm on August 15, 2024**. A copy of this Order must be served upon the Tenant. The **Tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have ended the tenancy for late payments of rent, I find I do not need to consider the other reasons listed in the One Month Notice.

As the Tenant was not successful with their application, I decline to award the cost of the filing fee.

Conclusion

The Tenant paid the rent within 5 days of receiving the 10 Day Notice, this automatically cancelled the 10 Day Notice and there was no requirement for the Tenant to dispute the 10 Day Notice. The Tenant is not entitled to recover the cost of the filing fee.

The Tenant's application to cancel the One Month Notice is dismissed. The Landlord is granted an Order of Possession. The Tenant is not 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: July 17, 2024

Residential Tenancy Branch