



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ROYAL LEPAGE LITTLE OAK
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy For Cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I questioned the parties respecting exchange of evidence, and I learned that the landlord has provided all evidence to the tenant, however the tenant has not provided any evidentiary material to the landlord, because they were exchanges made by the parties on a previous date and the landlord should have copies.

Any evidence that a party wishes to rely on must be provided to the other part even if they already have a copy, because it is important for all parties to know what is before me. Since the tenant has not provided the evidence to the landlord, I decline to consider it. All of the landlord's evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause dated July 11, 2024 was issued in accordance with the *Residential Tenancy Act*?
- Should the tenant recover the filing fee from the landlord?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$2,028.00 was originally payable on the 1st day of each month, which has been increased over time and is now \$2,226.64 per month. Copies of Notices of Rent Increase have been provided for this hearing. A copy of the tenancy agreement has also been provided for this hearing indicating that the landlord collected a security deposit from the tenant in the amount of \$1,014.00, however the landlord's agent testified that although he is not certain which tenancy agreement was provided for this hearing, the copy the landlord's agent has indicates a security deposit in the amount of \$975.00. The rental unit is the upper floor of a house that contains 2 basement suites.

The landlord's agent further testified that the landlord served the tenant with a One Month Notice to End Tenancy For Cause (the Notice) by posting it to the door of the rental unit on July 11, 2024, and a copy of the Notice has been provided for this hearing. It is dated July 11, 2024 and contains an effective date of vacancy of August 31, 2024. The reason for issuing it states: Tenant is repeatedly late paying rent.

The landlord has provided copies of 10 Day Notices to End Tenancy For Unpaid Rent or Utilities for the months of November, 2023 and January, February, March and June, 2024. Also provided is a tenant ledger, which shows late fees charged to the tenant. The landlord's agent testified that currently the rental arrears amount to \$66.64 for the month of September, 2024. The landlord's agent testified that the tenancy agreement does not provide for late fees.

The tenant testified that the tenant's employment wasn't the best, but asks for patience, and now has full time employment, and is hoping to move forward.

The tenant has not received an email from the landlord stating that \$66.64 is owed, or the tenant would have paid it.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause, and I find that it is in the approved form and contains information required by the *Act*.

The tenant seeks patience, and testified that he has not had good employment, but now does. I have no authority to grant the tenant patience; only the landlord may grant patience. My authority is to decide on the merits of the case.

In order to end a tenancy for repeated late rent, the landlord must establish no later than 3 late payments.

I have also reviewed the tenancy agreement provided by the landlord for this hearing, and although I have no idea what tenancy agreement the landlord's agent had before him during the hearing, the copy provided for this hearing provides for late payments, returned and non-sufficient fund cheques, which are subject to a minimum service charge of \$20.00 each, or the then current rate charged for such services by the Royal Bank of Canada, whichever is greater. The latter part is not lawful. It also states, that notwithstanding a service charge, failure to pay rent on the due date shall be a fundamental breach of the agreement.

The *Residential Tenancy Act* states that a landlord may charge a fee for late payment of rent in the amount of no more than \$25.00 and only if it is contained in the tenancy agreement.

I have also reviewed the tenant ledger and note that the landlord has been applying a \$25.00 late fee to late payments for numerous months since 2022, which is contrary to the tenancy agreement. The landlord's agent testified that late fees are not included in the tenancy agreement. That means that the landlord has been collecting fees that the landlord is not entitled to. I counted no less than 26 late payment fees of \$25.00 each, which would amount to \$650.00 or more.

Considering the evidence, I am not satisfied that the landlord has established that all of the late payments made by the tenant were justified as being late when the landlord has collected late fees that the landlord was not entitled to. Therefore, I cancel the One Month Notice to End Tenancy For Cause, and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application the tenant is entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant as against the landlord in that amount. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court, or I order that the tenant be permitted to reduce rent for a future month by that amount as full recovery.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated July 11, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 18, 2024

Residential Tenancy Branch