

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenants applied for:

- Cancellation of the Landlord’s One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

The Landlord applied for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Tenant A.P. attended the hearing for the Tenant.

Agent E.H. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

Service of Evidence

Both parties acknowledged receipt of the documentary evidence and raised no concerns regarding service. I therefore found the documentary evidence before me duly served on each party in accordance with the Act and accepted it for consideration.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties confirmed that this tenancy began on August 1, 2020, with a monthly rent of \$3,483.00 due on 1st of the month, with a security deposit in the amount of \$1,650.00.

The parties also agreed the Landlord served and the Tenant received the One Month Notice dated August 6, 2024. The effective date is September 30, 2024, and the reason to end the tenancy is that the tenant is repeatedly late paying rent.

The details of the events are:

Over the past 12 months, the tenant has repeatedly paid rent late, specifically in October 2023, June 2024, and July 2024. This has caused significant financial stress for the owner, as the landlord could not collect rent on time to pay the mortgage.

Please see attachment as late payment record, the rent payment is due on 1st of every month via preauthorization payment. The rent payment was paid and clear on October 16, 2023, June 21, 2024, and July 16, 2024.

Due to these three instances of late rent payments, it is clear that the tenant is unable to manage rent payments effectively. Consequently, the landlord has decided to issue a one-month notice to end the tenancy.

Both parties agreed that since the beginning of the tenancy the Tenant has paid rent late only on three occasions, namely, in October 2023, June 2024 and July 2024, and that the Landlord notified the Tenant regarding the insufficient funds of the Tenant's bank account via emails on these three occasions.

The Tenant submitted this application on August 12, 2024 and continue to occupy the rental unit.

Analysis

Pursuant to Rule of Procedure 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The Landlord has the onus of proof to establish that the One Month Notice is valid.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

Agent E.H. stated that the One Month Notice was sent to the Tenant via registered mail on August 6, 2024. The Tenant could not recall when she received it. I deem under s. 90 of the Act that the Tenant received it on August 11, 2024. The Tenant submitted this application on August 12, 2024.

I find that the application was submitted before the ten-day deadline to dispute the One Month Notice, in accordance with section 47(4) of the Act.

Residential Tenancy Branch Policy Guideline 38 states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

In this case there were three late payments within a 10-month period. I find the minimum threshold mentioned in Policy Guideline 38 was met.

Although the Landlord has presented evidence that they have received the minimum number of late rent payments sufficient to justify serving the One Month Notice, I find in the circumstances the Tenant cannot fairly be considered “repeatedly” late in paying rent because the late payments were far apart.

I note that whereas the two most recent late payments were with respect to June and July 2024, the late payment preceding these two was for the month of October 2023, approximately seven months prior to the June late payment. I have also considered the fact that the Tenant’s subsequent rent payments for August, September and October 2024 were not late.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and terminate this tenancy.

Therefore, the Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The One Month Notice dated August 6, 2024 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Pursuant to section 72(2) of the Act, the Tenant is authorized to recover her filing fee from the Landlord through a one-time deduction of **\$100.00** from November 2024 rent.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

The Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The One Month Notice of August 6, 2024 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

Pursuant to section 72(2) of the Act, the Tenant is authorized to recover her filing fee from the Landlord through a one-time deduction of **\$100.00** from November 2024 rent.

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: October 9, 2024

Residential Tenancy Branch