



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

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DECISION

Dispute Codes: CNR CNC FFT OPR-DR FFL

Introduction

The Tenant seeks orders cancelling two notices to end the tenancy and an order to recover the cost of the application fee, pursuant to sections 46, 47, and 72 of the *Residential Tenancy Act* (the “Act”). By way of cross-application the Landlords seek an order of possession based on those notices to end the tenancy and an order to recover the cost of the application fee, pursuant to sections 46, 47, and 72 of the Act.

For the reasons that follow, the Landlords are granted an order of possession based on a *One Month Notice to End Tenancy for Cause* (the “Notice”) and the Tenant’s application for an order cancelling the Notice is dismissed. All remaining claims are dismissed and only the Notice will be addressed in this decision.

Issue

Is the Tenant entitled to an order cancelling the notices to end the tenancy or are the Landlords entitled to an order of possession?

Background and Evidence

In an application under the Act where a tenant disputes a notice to end tenancy, the respondent landlord must prove the reason for issuing the notice to end tenancy on a balance of probabilities. Stated another way, the evidence must show that the events in support of the reason for issuing the notice to end tenancy were more likely than not to have occurred.

The tenancy began in early 2019. The monthly rent is \$1,683.00 and the rent is due on the first day of the month. There is insufficient information as to whether there is a security or pet damage deposit on this tenancy. There is a copy of a written tenancy agreement on the Landlords’ file, though the tenant listed is the Tenant’s former girlfriend. The Tenant took over the tenancy at some point.

On or about February 4, 2025, the Landlords served the Notice upon the Tenant. The Tenant disputed this Notice. The Landlords' representative (hereafter the "Landlord" for brevity) testified that, as indicated on page 2 of the Notice, the Notice was given because the Tenant was "repeatedly late paying rent." As briefly noted in the details section at the bottom of page 2 of the Notice the "rent [was] paid late 8 times in last 12 months". All four pages of the Notice have been served on the Tenant.

The Landlord referred me to a rent payment ledger which listed the dates and amounts of rent payments (*Email_Payment_Records.pdf*). The ledger lists rent payments being made on March 3, April 6, May 5, June 2, August 2, October 5, November 4, November 16, December 4, December 8, 2024, and, January 4, 2025.

The Tenant did not dispute that he has paid rent late many times. Unfortunately, he has not had a particularly good year, with employment income not being what it used to be. Notwithstanding that he knows paying rent late "looks really bad," he has secured recent employment with much better pay, and he also took on a second job. The Tenant outlined a payment plan to get him back on track with the rent arrears and going forward.

In response to this proposal and testimony, the Landlord explained that he was under instructions to not accept any plan for an ongoing tenancy and is mandated to pursue an order of possession. While the Landlord expressed his understanding with the Tenant's situation, he also remarked that the Tenant never previously approached the Landlords with any sort of payment plan or a proposal to make the tenancy work.

Both parties gave submissions regarding the effective date of any order of possession if one was granted. Further, both parties briefly testified about animals in the rental unit; however, the issue of animals will not be a deciding factor in these applications, so nothing further will be said about the dogs and cat.

Analysis

A landlord may issue a One Month Notice to End Tenancy for Cause under section 47(1)(b) of the Act when "the tenant is repeatedly late paying rent". Pursuant to *Residential Tenancy Policy Guideline 38*:

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.¹

In this dispute, the Landlords have provided persuasive oral testimony, supported by documentary evidence, proving that the Tenant was repeatedly late paying rent—a total of at least eleven instances since March 2024. And, while I have full sympathy for the Tenant’s not having a good year, the amount and timing of one’s income or paycheques have no legal bearing on the requirement to pay rent in full on the date that is due under a tenancy agreement. Thus, for this reason, I must conclude that the Landlords have proven a section 47(1)(b) ground for issuing the Notice and for ending the tenancy.

Having reviewed the Notice, it is my finding that it complies with form and content requirements as set out in section 52 of the Act.

Pursuant to section 55(1) of the Act, then, the Tenant’s application for an order cancelling the Notice is respectfully dismissed and the Landlords are granted an order of possession. An order of possession is issued with this decision to the Landlords, who must immediately serve a copy of the order of possession upon the Tenant.

Having carefully considered the submissions of the parties, it is my finding that the order of possession will have an effective date of seven days from the date it is served on the Tenant (excluding any deemed service days). While it is not lost on me that this is a rather tight period, I must consider the Landlords’ ongoing financial losses and the fact that the Tenant was aware for some time of the possibility that this tenancy might end.

Further, pursuant to section 55(1.1) of the Act, the Landlords are granted a monetary order in the amount of \$2,307.00 for the rent arrears and for the cost of the Landlords’ application (which is awarded under section 72 of the Act). As with the order of possession, the Landlords are required to immediately serve a copy of the monetary order upon the Tenant.

The remainder of the Tenant’s application is dismissed without leave to reapply. Having upheld the Notice, it is unnecessary for me to consider the merits or evidence directly related to the two other notices to end tenancy.

¹ *Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent*, ver. April 2004, p. 1

Conclusion

IT IS HEREBY ORDERED THAT:

1. The Tenant's application is dismissed without leave to reapply.
2. The Landlords' application is granted.
3. The Landlords are granted an order of possession with an effective date of seven (7) days from the date of service.
4. The Landlords are granted a monetary order for \$2,307.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: March 5, 2025

Residential Tenancy Branch