



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPC FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for cause, and the landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

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

During the course of the hearing the tenant advised that he had not received the landlord's evidentiary material. The landlord's agent testified that the hearing package, including all evidence, was sent to the tenant by registered mail on October 16, 2018, and has provided a copy of an undated Registered Domestic Customer Receipt. The landlord was permitted to upload to the evidence system a copy of a document to prove the date, which was completed during the hearing. The Canada Post tracking document shows that the landlord sent the evidence and hearing package on October 16, 2018. The *Act* permits service by registered mail and states that it is deemed to have been received 5 days after mailing. I find that the landlord has complied with the *Act*, and all evidence provided 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 was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

Background and Evidence

The landlord's agent testified that this tenancy began on January 11, 2005 and the tenant still resides in the rental unit. Rent in the amount of \$1,079.00 per month is currently payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on September 18, 2018 the tenant was served with a One Month Notice to End Tenancy for Cause, by posting it to the door of the rental unit that day. A copy has been provided for this hearing, and it is dated September 18, 2018 with an effective date of vacancy of October 31, 2018. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The landlord has also provided a copy of a Payment History document for this hearing, and the landlord's agent testified that the tenant is late with rent almost every month. In June, 2018 the tenant paid \$500.00 on the 3rd of the month and the balance of \$604.00 on the 15th, which includes a \$25.00 late fee. In July, the tenant paid \$1,100.00 on the 18th of the month which also includes a late fee. In August, 2018 the tenant paid \$1,100.00 on August 14, which also includes a late fee, and paid \$1,112.00 on September 18, 2018 which also includes late fees. The tenant paid the full \$1,079.00 for October's rent on the 3rd of the month, but November's rent was paid on time.

The landlord would be content with an Order of Possession effective at the end of November, 2018 since rent for November has been paid and was paid on time.

The tenant testified that his mother had a stroke, so the tenant sent a letter to the landlord's agent about having to send money to his mother in another Country. The tenant was told that payment by the 10th of the month is okay, and the tenant believed that if he paid \$500.00 twice, he'd be okay. Another agent of the landlord told the tenant that the rent had to be within 2 weeks, and the tenant took that to be a deadline.

Rent is paid by money order and the landlord issues receipts. October's rent was paid on the 1st of the month, not the 3rd as the landlord testified, and the tenant has a receipt containing that date. Perhaps it was deposited by the landlord on the 3rd of the month.

In September, 2018, the tenant paid the rent the same day that the One Month Notice to End Tenancy for Cause was received. The tenant wanted to pay by credit card, but the landlord refused that.

Landlord's Submissions

The landlord disputes the tenant's excuses about paying on the 10th of the month or within 2 weeks. The landlord's agent always warns the tenant that he can't be late with rent. Telling him that he had to pay by the 10th has never, never happened. However, the Payment History document is incorrect, and the landlord agrees that rent was received on October 1, 2018, not on October 3, 2018. The landlord looked through the receipt books during the hearing and stated that August's rent was paid on August 10, July's receipt is dated July 18, June's rent receipts are dated on the 1st and 15th of June.

The parties had a previous hearing in February 16, 2016 concerning the landlord's application for an Order of Possession and a monetary order for unpaid rent. The parties settled the dispute on the condition that the Order of Possession granted to the landlord would not be enforced if the tenant continued to pay rent on time. The tenant was well aware that rent was to be paid on time.

Tenant's Submissions

The tenant submits that he was sure it was okay to pay late; the landlord's agent was aware of the tenant's situation paying taxes and sending money to his family in another Country.

Analysis

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 (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it, repeated late rent, is disputed, and a minimum of 3 late payments are sufficient for ending a tenancy for repeated late rent.

The landlord's agent agrees that the Payment History provided as evidence for this hearing contains at least one error, in that the receipt for October, 2018 rent is dated October 1, 2018 and the Payment History document shows that rent was paid on the 3rd of the month. Late payments for rent due after the Notice was issued don't count however raise the issue of the landlord's Payment History document.

The landlord looked through the receipt books during the hearing and stated that August's rent was paid on August 10, 2018, but the Payment History document shows it was paid on August 14.

July's receipt is dated July 18, which is consistent with the Payment History document.

June's rent receipts are dated on the 1st and 15th of June, but the Payment History document shows June 3 and 15.

In the circumstances, I am not satisfied that the Payment History document can be relied upon, and no receipts have been provided for this hearing. Although I do not accept the testimony of the tenant that it was okay to pay rent late, especially considering the hearing in February, 2016, I do agree with the tenant that perhaps the dates in the Payment History document are the dates that the rent money orders were deposited into the landlord's account. I am not satisfied, therefore, that the landlord has established repeated late rent.

The landlord's application is dismissed and I cancel the Notice. The tenant is aware that rent must not be late.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The One Month Notice to End Tenancy for Cause dated September 18, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, 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: November 09, 2018

Residential Tenancy Branch