



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT
 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 to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant.

The parties both attended and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of evidence were raised 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 testified that this month-to-month tenancy began on April 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable in installments, and there are currently no rental arrears. The landlord did not collect a security deposit or pet damage deposit from the tenant. The rental unit is a suite on the side of the landlord's home.

A copy of the tenancy agreement has been provided for this hearing which is dated March 29, 2018 and contains an Addendum which states: "The tenant agrees to pay one half of the monthly rent on the 1st and 15th of each month (\$375.00 twice per month)." and "July 12/19 because of a change of jobs, (the tenant) will pay ½ of monthly rent on the 6th and 21st of each month." The landlord testified that the change in dates due was effective July 12, 2019, however the tenant has been consistently late paying rent.

The landlord served the tenant personally with a One Month Notice to End Tenancy for Cause on July 15, 2019, a copy of which has been provided for this hearing. It is dated July 16, 2019 and contains an effective date of vacancy of August 16, 2019. The landlord has also provided a Proof of Service document stating that the tenant was served personally on July 15, 2019, and the landlord testified that one of the documents has an incorrect date. The reason for issuing the Notice states: "Tenant is repeatedly late paying rent."

A tenant ledger has also been provided for this hearing, initialed by the landlord and by the tenant for each payment made, which shows that the tenant was late paying rent:

- 5 days for January,
- 5 days late for the first installment in February,
- 4 days late for the second installment in February,
- 5 days late for the first installment for March,
- 5 days late for the first installment in April,
- 6 days late for the first installment for May, and
- more than a month late for July, 2019.

The tenant testified that the landlord was paid by mid-month and was happy with that. The landlord also previously served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the tenant paid the rent within 5 days.

On July 13, 2019 the landlord gave the tenant notice that rent would be increased starting in October, 2019 and then 2 days later said she was going to evict the tenant and gave the tenant the One Month Notice to End Tenancy for Cause. In August, 2019 the tenant offered to pay in advance and was willing to work with the landlord but the landlord refused the offer.

The landlord disputes that there was ever any offer to pay rent in advance, but would be content with an effective date of vacancy of October 20, 2019 if the tenant pays the rent that is due on October 6, 2019.

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.

The *Residential Tenancy Act* is clear; a tenant must pay rent when it is due, and if a tenant is repeatedly late paying rent, the landlord may end the tenancy by giving a One Month Notice to End Tenancy for Cause. Three recent late payments are the minimum required to claim repeated late rent.

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*. Although the evidence is not clear about when the Notice was issued or served, I accept the testimony of the landlord that it was personally served on July 15, 2019 and signed that date as well, given that the tenant testified that it was served 2 days after July 13, 2019.

The tenant does not dispute that rent has been repeatedly late but relies on his testimony that rent was paid by mid-month and the landlord was okay with that. Obviously the landlord is not okay with that, and there is no legal defense to paying late. I find that the landlord has established repeated late rent, and the Notice was given in accordance with the *Residential Tenancy Act*. Therefore, I dismiss the tenant's application, and I grant an Order of Possession in favour of the landlord.

The landlord testified that she would be content with an effective date of vacancy of October 20, 2019, and I grant the Order of Possession effective that date at 1:00 p.m., and I order the tenant to pay rent to that date.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on October 20, 2019.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

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: October 01, 2019

Residential Tenancy Branch