



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, RP, OLC**

Introduction

This hearing dealt with an application filed by the tenant pursuant to the *Residential Tenancy Act* ("the Act").

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order for regular repairs pursuant to sections 32 and 62; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

Both the tenant and the landlord attended the hearing. The landlord was represented at the hearing by an agent, his wife, SM ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Neither party expressed concerns with timely service of documents.

The hearing process was explained and both parties were advised that recording of the hearing was prohibited. At the commencement of the hearing, I advised the parties that I would be exercising my ability to sever unrelated issues pursuant to rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure. The issue of whether to cancel or uphold the landlord's notice to end tenancy was the primary issue to be determined and the tenant's other two issues were dismissed with leave to reapply.

Preliminary Issues

The tenant filed an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities although the notice to end tenancy issued to her was a One Month Notice to End Tenancy for Cause. The tenant did not supply a copy of the notice she

was served with for this hearing whereas the landlord supplied a copy of the One Month Notice to End Tenancy for Cause in his evidence.

The tenant testified that she was also served with an application filed by the landlord seeking to end the tenancy early. A hearing was set for the day after this hearing and the file number is recorded on the cover page of this decision. The landlord's agent testified that she withdrew this application and I confirmed that information on the Residential Tenancy Branch's dispute management system. The landlord's agent also testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and that the landlord has filed a direct request seeking to end the tenancy for unpaid rent and a monetary order. The file number for the direct request proceeding appears on the cover page of this decision and the application has not yet been processed.

Based on the multiple notices to end tenancy the landlord has served upon the tenant, and in accordance with section 64(3), I amend the tenant's application to reflect that she seeks to dispute the One Month Notice to End Tenancy for Cause rather than a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant's application appears to misname to landlord by repeating his surname twice. I also amend the tenant's application to reflect the landlord's name without the surname repeated twice.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by the landlord. The month to month tenancy began on May 1, 2018. Rent was set at \$1,500.00 per month payable on the first day of each month. A security deposit of \$750.00 was collected by the landlord which she continues to hold.

The landlord testified that the tenant has been sporadic in paying rent. Instead of rent being paid in full on the first day of each month, it comes in little by little throughout the month. Payments for rent were made by interac e-transfer and copies of the transfers were provided as evidence by the landlord. The landlord drew my attention to 2021 payments made by e-transfer. January's rent was paid in 3 installments on January 13, January 20 and January 27. February's rent was paid on February 4, 19, and 26.

March's rent was paid on March 19, and March 27th. In each of these months, the tenant fell short of paying the full rent.

On April 22, 2021, the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause. The effective date stated on the notice is June 1, 2021. The landlord testified that the copy provided to the tenant was signed by the landlord although the one provided as evidence is a computer generated copy that does not bear the landlord's signature.

The landlord cites 2 reasons for ending the tenancy on the notice. The first reason is repeatedly late paying rent. The second reason is because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant gave the following testimony. She acknowledges receiving the landlord's notice on April 22nd but did not file an application to dispute the notice within 10 days of receiving it. The tenant testified that she didn't know she only had 10 days to dispute it; she understood she had 30 days to dispute the notice. The tenant further testified that she has health issues such as an auto-immune disease, arthritis and she's taking medication which makes her ill. She can barely use her hands. She is on a disability pension and relies on a child tax payment to assist in paying her rent.

The tenant testified that the tenancy agreement allows her to make equal payments on the 1st and the 20th of each month. No other version of the tenancy agreement was provided as evidence for this hearing by the tenant. When asked why the payments were not consistently made on the 1st and the 20th, the tenant responded saying the landlord has been kind to her accepting payments randomly. The tenant testified that her ex-spouse was not providing her with money, making it difficult to pay the landlord the full amount on time. The tenant testified she receives CPP disability payments and child tax payments and she struggles financially.

Analysis

In accordance with sections 47(3) and 52 of the Act, I have reviewed the notice to end tenancy served upon the tenant and I am satisfied it meets all the form and content requirements.

The tenant acknowledges receiving the landlord's One Month Notice to End Tenancy for Cause on April 22, 2021 when it was personally served upon her.

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and (b) must vacate the rental unit by that date.

The tenant did not provide any serious or compelling exceptional circumstances that prevented her from making an application within the 10 day period required by section 47. Not taking the time to read or understand the eviction notice given to her by her landlord is not an exceptional circumstance compelling me to allow an extension of time to dispute it. As such, the tenant is conclusively presumed to have accepted the tenancy ended on June 1st, 2021. The landlord is entitled to an order of possession pursuant to section 47(5)(a) of the Act. As the effective date has passed, the landlord is entitled to the order of possession to be effective two days after service upon the tenant.

Although I have already granted an order of possession to the landlord, I also make the finding that full rent was due to the landlord on the first day of each month and that for the months of January, February and March, 2021, the tenant failed to pay her rent in full. Without any documentary evidence to corroborate her testimony that the landlord allowed her to pay rent on the first and twentieth of each month, I find that on a balance of probabilities, rent was due in full on the first day of each month as shown on the signed tenancy agreement. As stated in Residential Tenancy Branch Policy Guideline PG-38 [Repeated Late Payment of Rent], three late payments are the minimum number sufficient to justify a notice under section 47(1)(c) of the Act. The tenant was late 3 times between January and March 2021. I uphold the landlord's notice to end tenancy.

Conclusion

The tenant's application to cancel the landlord's notice to end tenancy is dismissed without leave to reapply. The landlord is awarded an order of possession effective 2 days after service upon the tenant.

This decision does not affect the landlord's application for a monetary order sought in the landlord's direct request proceeding.

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: July 05, 2021

Residential Tenancy Branch