



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC CNR FFT OLC

Introduction

This hearing dealt with the tenant's application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. I note that although the hearing was scheduled for the standard one hour hearing slot, the hearing was extended an additional 16 minutes to ensure that both parties had sufficient time to make their submissions. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') and amendment. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the Application and amendment.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 14, 2022 as well as a 1 Month Notice dated January 25, 2022. In accordance with section 88 of the *Act*, I find that both Notices were duly served on the tenant.

Preliminary Issue – Service of Landlord’s Evidence

The tenant testified in the hearing that they did not receive the landlord’s evidence package. The landlord testified that the tenant was served the package by way of registered mail, and provided the tracking number for the package which was sent on March 29, 2022. The landlord believes that the tenant was purposely evading service of the package, and requested that the tenant attend the lobby during the hearing to retrieve the package.

The tenant denies receiving the package or a notice that a package was sent to them. Counsel for the tenant noted that the tenant in fact had been trying to contact the landlord in order to obtain these materials before the hearing date.

Although in accordance with sections 88 and 90 of the *Act*, a package is deemed served on the recipient 5 days after registered mailing, the tenant denies having received the package. Given the importance, as a matter of natural justice and fairness, that the party must know the case against them and have an opportunity to review and respond to the materials submitted, I find that in light of the evidence before me, I am not satisfied that the tenant had an opportunity to review the submitted materials.

In this case, although the landlord did served the tenant with their evidence package, the tenant denies receiving a pickup slip for the delivery. Although I note the landlord’s concerns, based on the evidence and testimony before me, and the fact that the slip could have possibly gotten misplaced or lost, I am not satisfied that the tenant was able to obtain to retrieve the landlord’s evidentiary materials.

Upon further investigation, I note that the tracking number is valid, and does note that a “Notice card left indicating where and when to pick up item” and that a final notice was provided, I am unable to determine from the evidence whether the tenant had in fact received this notice. As noted above, the tenant has the right to review these materials and respond to them. Various options were discussed in the hearing, and after considering these options, the landlord confirmed that they did not want to consider an adjournment of this matter in order to allow the tenant to be re-served with the materials. The landlord testified that they were unable to email the tenant with these materials during the scheduled hearing as well. The landlord wanted the tenant to retrieve the materials during the hearing, but the tenant responded that they could not. I note that even if the tenant wanted to retrieve the materials, they were being held at the post office, and there would be insufficient time during the scheduled hearing for the tenant to do so.

The landlord confirmed in the hearing that they were okay with the exclusion of their evidentiary materials, and proceed with the scheduled hearing by providing sworn oral testimony instead. Accordingly, the landlord's evidentiary materials were excluded for the purposes of the hearing as the tenant did not have the opportunity to review them, and the hearing proceeded as scheduled.

Issues

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2020. Both parties confirmed that the rent was originally set at \$2,500.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,250.00, and a pet damage deposit in the amount of \$300.00, which the landlord still holds.

The tenant testified that in May 2021 their roommate had moved out, and the landlord had agreed to permanently reduce to rent to \$2,200.00 so that the tenant could afford to continue with the tenancy. The tenant testified that they have been paying this amount since June 2021, as supported by their bank records of the electronic transfers.

The landlord does not dispute that a discount was provided, but testified that this was only provided for June 2021 in order to assist the tenant with financial difficulties. The landlord testified that the rent was still set at \$2,500.00 as per the tenancy agreement.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on January 14, 2022 for failing to pay the outstanding rent owed. The landlord testified that the tenant should have paid \$2,500.00 from July 2021 onwards, but has only been paying \$2,200.00.

On January 25, 2022, the landlord served the tenant with a 1 Month Notice for Cause citing the following grounds:

1. The tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site.
3. Tenant has not done required repairs of damage to the unit/site.

The landlord testified that the tenant was late in paying their rent on multiple occasions, specifically the June payment that was paid on June 2, 2021, the July payment which was not paid until July 24, 2021, and the August payment which was paid on August 20, 2021. The landlord testified that the tenant also failed to pay the proper amount which was \$2,500.00, other than for June 2021.

The landlord testified that they had served the tenant with the 1 Month Notice as their realtor had to cancel a listing due to the tenant's refusal to cooperate with showings. The landlord testified that they were only able to show the unit three times, and the tenant would try to sabotage the showing by cancelling the day before, or be hungover. The landlord testified that the tenant also denied entry stating that they had guests, or were away. The landlord testified that the tenant also attempted to make parties uncomfortable. The landlord testified that they suspected the tenant was renting out portions of the suite as a short term vacation rental as well.

The landlord testified that the tenant had flooded and caused damage to the building, including another rental unit with their air conditioning unit. The landlord testified that they tenant denied entry to the rental unit for investigation or repairs, and that the tenant had caused extraordinary damage. The landlord testified that the tenant caused the issue twice as they disregarded orders to not use their air conditioning unit.

The landlord also expressed concerns over their health issues caused by the tenant. The landlord testified that the tenant also had a disregard for others, and refused to wear a mask in public areas like the elevator. The landlord requests an Order of Possession pursuant to both notices.

The tenant does not dispute that they have been paying \$2,200.00 since June 2021, but that this was by consent of the landlord. The tenant testified that the dispute only arose

after the tenant had a disagreement with the landlord over the garburator in October 2021. The tenant notes that they had paid that amount for many months with no warnings or Notices to End Tenancy. The tenant testified that the landlord was lenient by providing the tenant with a three day window to make payments, and did not consider these payments late. The landlord confirmed in the hearing that the tenant was provided a buffer of three days around the due date to make their payments, which was by way of electronic transfer.

The tenant provided their banking statements in evidence which showed their rent payments made on specific dates. The tenant testified that only June and July payments were made late as the two parties were in discussions about rent payments, but that subsequent payments were made on time, and even early. The tenant testified that they paid within the three day window allowed by the landlord, and the landlord cannot consider these late payments for the purpose of ending the tenancy.

The tenant also does not dispute that there was a leak that had caused damage, but testified that the matter was resolved by way of a monetary settlement by the tenant with the owner of the affected rental unit. The tenant testified that there is no extraordinary damage, and that they had paid for the repairs.

The tenant and their legal counsel request that the 1 Month Notice be cancelled as the landlord has not met the onus of proof to support the grounds indicated on the 1 Month Notice.

Analysis

The tenant was served with both a 10 Day Notice for Unpaid Rent as well as a 1 Month Notice. I will consider the validity of the 10 Day Notice first.

It is undisputed that since June 2021 the tenant has been paying \$2,200.00 in monthly rent even though the tenancy agreement sets the rent at \$2,500.00. The tenant testified that the landlord gave express permission to reduce the rent to \$2,200.00 after the tenant's roommate had moved out in May 2021. The landlord testified that this deduction was a one time deduction for the month of June 2021 only. No written agreements exist.

In light of the testimony and evidence before me, I find it undisputed that the tenant has been paying the landlord \$2,200.00 in monthly rent since June 2021. I find that despite the fact that rent was originally set at \$2,500.00, the tenant had paid the landlord

\$2,200.00 for the monthly rent for a period of six months after June 2021 before the tenant was served with a 10 Day Notice to End Tenancy on January 14, 2022. I find that the landlord has not provided any evidence to show that the tenant was served with any warnings or Notices prior to January 14, 2022 informing the tenant that rent was in fact \$2,500.00. On the other hand, the tenant has established that the landlord had continued to accept the rent payments of \$2,200.00 for a substantial amount of time before serving the tenant with the 10 Day Notice. The tenant notes that a disagreement took place between the parties, which changed the landlord's attitude towards the tenant. I do not find the landlord's version of the events to be supported in evidence, while I find the tenant's version has.

I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the landlord has established a pattern of accepting rent payments from the tenant from July 2021 through to December 2021 with no written notices or warnings that the rent was in fact \$2,500.00. In the absence of written notice to the tenant informing them that the rent discount was only for the month of June 2021, and based on the legal doctrine of estoppel, I find that the landlord has established that the tenant may pay a reduced amount on an ongoing basis, specifically \$2,200.00, for their monthly rent. I find that despite the original agreement for rent to be set at \$2,500.00, the landlord had agreed to accept rent in the amount of \$2,200.00 as of June 2021 going forward. Although the landlord and tenant may no longer be on good terms, the landlord may not unilaterally revoke this right without permission of the tenant or by way of mutual agreement to do so. I find that the tenant has established that the landlord had agreed to accept rent payments in the amount of \$2,200.00 without penalty or requirement to reimburse the landlord the difference from the original amount. Accordingly, I am allowing the tenant's application for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent as I am not satisfied that the tenant has failed to pay the outstanding rent referenced on the 10 Day Notice.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application disputing the 1 Month Notice within the required time limit, and having issued a notice to

end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In this case, the landlord is seeking an Order of Possession on three grounds. The first of the grounds is repeated late rent payments. I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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

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...

The tenant expressed concern that this tenancy should not end on the grounds of repeated late rent payments when the tenant was only late on two occasions. The tenant noted that the landlord had always provided a three day window for rent payments without penalty, and that the tenant had paid within this time period on every occasion with the exception of the two months.

I have considered the evidence submitted as well as the sworn testimony of both parties. Although I find that the landlord did provide undisputed evidence and testimony that the tenant has been late paying rent on several occasions, three of which had occurred in 2019, I find that the tenant has established that late rent payments have been accepted for some time without proper written warning from the landlord.

In consideration of the evidence before me, I find that although rent is payable on the first of the month, the landlord had provided the tenant with a window for rent payments which was three days. Outside of the two months admitted by the tenant, I find that the tenant had paid within that window. I find that the landlord had failed to establish that the minimum requirement was met in order to end the tenancy on the basis of repeated late rent payments. On this basis, I find that the landlord has not sufficiently established that this tenancy should end on the grounds of repeated late rent payments.

The landlord is also wanting to end the tenancy for the tenant's failure to perform required repairs to the rental unit or site. In consideration of the evidence and testimony before me, although there had been incidents where damage was caused by the tenant, I find that the tenant had resolved these issues. I am not satisfied that there is still damage to the rental unit that requires repairs by the tenant, and accordingly, I dismiss the landlord's request to end the tenancy on this ground.

Lastly, the landlord is requesting an end of this tenancy on the grounds that the tenant has caused extraordinary damage to the unit/site. Although there was damage as admitted by the tenant, I am not satisfied that the landlord had established that the damage caused would be considered extraordinary, especially to the extent that would require the end of this tenancy. Accordingly, I dismiss the landlord's request to end the tenancy on this ground.

I note that the landlord had referenced several other issues in the tenancy. I find that the landlord had only selected the three grounds noted in this decision. Although the landlord may have valid concerns, I am not satisfied that the landlord has established that:

1. The tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site.
3. Tenant has not done required repairs of damage to the unit/site.

For all these reasons noted, I allow the tenant's application to cancel the 1 Month Notice dated January 25, 2022. The 1 Month Notice is hereby cancelled, and is of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

The tenant requested an order for the landlord to comply with the *Act*. I do not find that any further orders are necessary at this time, and I dismiss this portion of the tenant's application with leave to reapply.

I allow the tenant to recover the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenant's application to cancel both the 10 Day Notice dated January 14, 2022 and the 1 Month Notice dated January 25, 2022 is allowed. Both notices are of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to recover the filing fee for this application. I issue a monetary award in the tenant's favour in the amount of \$100.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount.

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: April 27, 2022