



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 04, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated February 28, 2022 (the “Notice”)
- For a repair order

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. The hearing proceeded for 17 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive evidence from the Tenant.

I find the Tenant failed to comply with rule 3.14 of the Rules in relation to service of their evidence. I exclude the Tenant’s evidence pursuant to rule 3.17 of the Rules because I find it would be unfair to consider it when the Landlord has not seen it and could not respond to it at the hearing.

The Landlord testified that they served their evidence on the Tenant in person April 04, 2022.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the Landlord's evidence in accordance with section 88(a) of the *Residential Tenancy Act* (the "Act") on April 04, 2022. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

I proceeded with the hearing in the absence of the Tenant because the Landlord sought an Order of Possession based on the Notice. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Tenant entitled to a repair order?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started April 01, 2021. Rent is \$1,850.00 per month due on the first day of each month.

The Notice was submitted. The Notice is addressed to the Tenant and relates to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of March 31, 2020. The grounds for the Notice are:

1. Tenant is repeatedly late paying rent.

The Landlord testified that the Notice was served on the Tenant in person February 28, 2022.

The Landlord confirmed the information shown in the documentary evidence which is that the Tenant paid rent late in August, September, October and November of 2021 as well as January and February of 2022.

The Landlord submitted that the Tenant disputed the Notice late.

The Landlord sought an Order of Possession effective June 30, 2022.

Analysis

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I dismiss the Application without leave to re-apply because the Tenant did not appear at the hearing to provide a basis for the Application.

The Landlord is seeking an Order of Possession based on the Notice. Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the validity of the Notice and I consider that now.

The Notice was issued pursuant to section 47 of the *Act* and the following subsection:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent...

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

I accept the undisputed testimony of the Landlord that they served the Notice on the Tenant in person February 28, 2022. I find the Notice was served in accordance with section 88(a) of the *Act*. I find the Tenant received the Notice February 28, 2022.

The Tenant filed the Application March 04, 2022, within time. I acknowledge that RTB records show the Application was filed March 11, 2022; however, I have reviewed the RTB notes, and I find the delay between March 04 and 11, 2022 was due to the RTB following up on the request for a repair order and I find the Tenant did not dispute the Notice late.

I accept the undisputed testimony of the Landlord that the Tenant paid rent late six times before the Notice was issued and find the Landlord's documentary evidence supports this.

RTB Policy Guideline 38 states:

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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

I find the Tenant has paid rent late six times over seven months and therefore the Tenant is repeatedly late paying rent. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act*. I note that the effective date of the Notice is wrong; however, the effective date is automatically changed pursuant to section 53 of the *Act*.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Tenant's dispute of the Notice has been dismissed without leave to re-apply given nobody attended the hearing for the Tenant to provide a basis for the dispute. Further, the Landlord has proven the grounds for the Notice, and I uphold the Notice. I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective at 1:00 p.m. on June 30, 2022.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on June 30, 2022. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 20, 2022

Residential Tenancy Branch