



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DYNAMIC PROPERTY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC (Tenant)
 OPC, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant applied on August 25, 2022, as follows (the “Tenant’s Application”):

- To dispute a One Month Notice to End Tenancy for Cause dated August 08, 2022 (the “Notice”)

The Landlord applied on August 29, 2022, as follows (the “Landlord’s Application”):

- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenant appeared at the hearing. The Agents for the Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred 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?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. Rent is due on the first day of each month.

The Notice was submitted. The effective date of the Notice was September 16, 2022. The ground for the Notice is repeated late payment of rent. The "Details of the Events" set out that the Tenant has paid rent late 15 times during the tenancy including five times in 2022. The Tenant did not raise an issue with the form or content of the Notice when asked.

The Agents testified that the Notice was sent to the Tenant by registered mail August 08, 2022 and that Tracking Number ending 954 relates to this. The Landlord submitted the Canada Post website information showing the package was sent August 08, 2022, attempted delivery occurred August 12, 2022, a notice card was left August 12, 2022, and the package was picked up August 15, 2022.

The Tenant confirmed receipt of the Notice by registered mail in August. The Tenant could not recall why there was a delay in picking up the registered mail and said August 15, 2022, was when they were able to get to the post office to pick it up.

The Agents for the Landlord testified that the Tenant paid rent late in February, March, June, July and August of 2022. The Agents testified that the Tenant was issued 10 Day Notices for these late payments but paid within the five days permitted to cancel the 10 Day Notices. The Agents testified that the Tenant has paid rent late 16 times since the start of the tenancy.

The Tenant testified that they are disputing the Notice because they want to keep their home. The Tenant testified that they are now paying rent on time and have shown they can pay rent on time moving forward. The Tenant testified that they do not owe the

Landlord rent at this point. The Tenant testified about difficulties in the past and having to find a new place to live being concerning.

The Agents sought an Order of Possession effective at the end of February 2023.

The Tenant submitted documentary evidence about their personal circumstances.

The Landlord submitted a lease ledger, Proof of Service of the Notice, documentary evidence of service of the Notice and rent receipts for use and occupancy only.

Analysis

The Notice was issued pursuant to section 47 of the *Act*.

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. This is also stated on the Notice itself.

I accept the testimony of the Agents that the Notice was sent August 08, 2022, by registered mail, because the documentary evidence shows this. The Landlord served the Notice in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice August 13, 2022. The Tenant cannot delay service dates by failing to pick up registered mail. The Tenant did not provide any valid reason for the delay in picking up the registered mail that could rebut the deeming provision in section 90(a) of the *Act* (see RTB Policy Guideline 12 pages 13 to 14).

Given the above, the Tenant had until August 23, 2022, to dispute the Notice. The Tenant did not dispute the Notice until August 25, 2022, two days late. The Tenant did not seek more time to dispute the Notice and therefore I cannot extend the time for disputing the Notice. Further, the Tenant did not provide any valid reason for extending the time to dispute the Notice.

Given the above, section 47(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted the Notice and was required to vacate the rental unit by September 30, 2022, the corrected effective date of the Notice.

Given this, the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act*.

Given the conclusive presumption applies, the Landlord does not have to prove the grounds for the Notice. The Tenant is conclusively presumed to have accepted the Notice. However, I do note that RTB Policy Guideline 38 addresses repeated late payment of rent and states:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

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.

(emphasis added)

I did not understand the Tenant to dispute that they had paid rent late. I cannot consider the Tenant’s personal circumstances when deciding the validity of the Notice as is clear from the above paragraphs. Further, as stated above, the Landlord only has to show three late payments of rent within a relatively short period of time to justify the Notice. Five late rent payments in eight months in 2022 was sufficient to justify the Notice. I would have upheld the Notice even if the Tenant had disputed it in time.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Tenant's dispute of the Notice is dismissed without leave to re-apply.

Given the above, the Landlord is entitled to an Order of Possession pursuant to section 55(1) and 55(2) of the *Act*. The Landlord is issued an Order of Possession effective February 28, 2023.

Given the Landlord has been successful in the Landlord's Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2023. This 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.

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial 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: January 23, 2023

Residential Tenancy Branch