



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR CNR

Introduction

This hearing dealt with three applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47; (primary application)
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 46;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 46;

The tenant attended. The landlord was represented by the agent GC (“the landlord”).

Each party was granted the opportunity to submit affirmed testimony, submit documents and call witnesses. I explained the hearing process and answered questions.

Service

The agent for the landlord provided testimony he served the tenant twice by registered mail. The first time, the landlord testified he sent the registered mail to the tenant on October 14, 2022. The landlord testified he sent a second registered mail to the tenant with additional evidence on February 9, 2023. The

landlord provided the Canada Post Tracking Numbers in support of service and submitted copies of the receipts.

The landlord stated he sent the registered mail to the tenant at the tenant's residential address. The tenant acknowledged the address was correct.

Under section 90 of the Act, the registered mail is deemed received by the tenant five days later, October 19, 2022, and February 14, 2023.

Section 15 of *Residential Tenancy Policy Guideline #12 - Service Provisions* explains the requirement for proof of service.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

In consideration of the parties' testimony and the landlord's credible supporting documents, I find that the landlord has established service on the tenant of the Notice of Hearing and Application for Dispute Resolution. I find the landlord served the tenant as required on two occasions with service effected on October 19, 2022 and February 14, 2023 in accordance with sections 88 and 89 of the Act. I find all the documentary evidence referenced by the landlord was properly served.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an Order of Possession in favour of the landlord.

Section 55 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 landlord requested an Order of Possession effective on 2 days' notice.

Behaviour of the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") Rules of Procedure states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I informed the parties I do not make my Decision during the hearing and would submit my Decision to them simultaneously in writing. Nevertheless, the tenant informed me twice he would not follow any Decision I made against him, and he would appeal. He asked me for advice on how to appeal and what to do when I decided in favor of the landlord.

During the hearing, the tenant repeatedly argued with the landlord and me. He refused to acknowledge most undisputed facts between the parties.

As a result of the tenant's acrimonious conduct, the hearing took longer than expected.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice? Is the landlord entitled to an Order of Possession?

Background and Evidence

I do not refer to all the evidence in my Decision. While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

Background of Tenancy

A copy of the tenancy agreement was submitted. The parties agreed to the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	August 15, 2018
Fixed Term End Date	August 131, 2019, then month-to-month
Vacancy Date	ongoing
Rent payable on first of month	\$2,100.00
Security deposit	\$1,050.00

One Month Notice

The parties agreed a One Month Notice was issued by the landlord as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	October 14, 2022
Effective Date of Notice	November 30, 2022
Date and Method of Service	Acknowledged on October 14, 2022
Application for Dispute Resolution	October 19, 2022

The reasons for issuance of the Two Month Notice were:

1. Tenant has allowed an unreasonable number of occupants in the unit/site.
2. Tenant or a person permitted on the property by the tenant has
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord. put the landlord's property at significant risk.
3. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Landlord's Testimony

The landlord provided the following information in the One Month Notice:

1. Late rent Payment - 2019 September rent paid on September 2th(should be 1th)
 - 2020 September rent paid on September 4th(should be 1th)
 - 2021 May rent paid on May 3th(Should be 1th)
 - 2021 October rent paid on October 4th & 8th(should be 1th)
 - 2022 January rent paid on January 2th & 5th(should be 1th)
 - 2022 March rent paid on March 4th(should be 1th)
 - 2022 April rent paid on April 4th / 2022 May rent paid on May 3th(should be 1th)
2. Current tenant(AJ) listed online for office space rental for unit # 1332 on October 2019 which is illegal sublease
3. Current tenant(AJ) did illegally sub rented to other person on June 3th 2022
3. Current tenant(AJ) smoke and throw the cigarette butts on balconies below(fire hazard) on June 2th 2021
4. Current tenant(AJ) smoking in the unit on March 20th 2021
5. Unit(# 1332) Loud music noise complaint on Jan 10th 2021
6. Unit(# 1332) Loud noise and disturbing other residents on July 18th 2020
7. Current tenant(AJ)Missed annual fire inspection 2 prior occasions May 2022
8. Total unpaid rent is \$ 7,760.00(April 2020 – August 2020), and tenant(AJ) never paid that amount even promise to pay with repayment plan schedule
9. Total Strata penalties is \$ 500.00 for smoking violation, illegal sublease, loud noise....#9

The above excerpt from the One Month Notice sets out the dates the landlord received the rent from the tenant for several months of the tenancy. The landlord also gave details of other grounds for the issuance of the Notice including strata fines against the tenant, noise, and subletting without consent. The allegations were repeated in the landlord's testimony during the hearing. The landlord relied on the late payment of rent. The landlord testified they gave the tenant many warnings about the late payments and the other alleged grounds.

The landlord testified that the tenant was late paying rent for almost all months of the tenancy. Sometimes the tenant paid the rent in two late installments. The tenant was late paying rent for the 3 months immediately preceding the issuance of the Notice, that is for August, September and October 2022.

The landlord provided dates for the late receipt of the rent and complete supporting documentary evidence for the 3 months immediately preceding issuance of the Notice..

The landlord stated the tenant had been late making rent payments in several months since the One Month Notice was issued.

Tenant's Testimony

Each date of alleged late rental payment was reviewed with the tenant during the hearing. The tenant did not dispute the landlord's evidence that the tenant paid the rent late as testified. He stated he had no reason to deny the veracity of the landlord's evidence. The tenant did not submit any documentary evidence to contradict the landlord. The tenant testified he was unable to remember when he made the rent payments.

The tenant stated he wanted the tenancy to continue and would not be late paying rent again.

Analysis

A tenant must pay rent when it is due.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

Section 47(1)(b) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy when the tenant is repeatedly late paying rent.

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.

Three late payments are the minimum to justify repeated late rent. The tenant does not dispute the landlord's testimony that rent has been paid late on 3 occasions in the year immediately preceding the issuance of the Notice, replying that he does not recall the dates.

Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, states, in part:

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.

I have reviewed the One Month Notice and I find that it is in the approved form and contains information required by the Act.

The tenant’s position is that he wants the tenancy to continue, and he will make payments on time henceforth. Without submitting any documentary evidence, the tenant refused to concur with the landlord’s evidence about the alleged late payments. The tenant continues to reside in the unit.

I have considered all the oral and documentary evidence before me. I find that the landlord has proven, on a balance of probabilities, the ground (that is, section 47(1)(b) of the Act) on which the One Month Notice to End Tenancy for Cause was given. Accordingly, the tenant’s application to cancel the One Month Notice is dismissed and the One Month Notice is upheld. The application for recovery of the cost of the application filing fee is similarly dismissed.

The Act states that where I dismiss a tenant’s application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form.

Having found that the One Month Notice is in the approved form, I grant an Order of Possession in favour of the landlord effective on 2 days notice.

10 Day Notices

The 10 Day Notice were only briefly referred to by the parties during the hearing, and the landlord provided no substantive testimony or any submissions in respect of this specific notice.

The onus falls on a landlord who issues a notice to end a tenancy to prove the ground on why that notice was issued. Given that the landlord has not proven the ground on which the 10 Day Notices were issued, it is my finding that the 10 Day Notices are hereby cancelled. They are of no legal force or effect.

I have addressed only the One Month Notice .As I have granted an Order of Possession pursuant to the One Month Notice, I will not consider the tenant's applications to cancel and the landlord's application for an Order of Possession under the 10 Day Notices. The applications are dismissed without leave to reapply.

Conclusion

The tenant's applications are hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice. This order is final and binding and may be enforced. The landlord must serve a copy of the Order of Possession upon the tenant.

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: March 1, 2023

Residential Tenancy Branch