



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROTHERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 12, 2016 ("1 Month Notice"), pursuant to section 46; and
- other unspecified remedies.

The respondent landlord's agent, KN ("landlord") appeared at the date and time set for the hearing of this matter. The landlord confirmed that she was the administrative clerk for the landlord company named in this application and that she had authority to speak on its behalf at this hearing. The applicant tenant did not appear at this hearing, although I waited until 9:40 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord confirmed that the tenant was served with the landlord's written evidence package on March 29, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on April 3, 2016, five days after its registered mailing.

The landlord testified that the landlord's 1 Month Notice was posted on the tenant's rental unit door on February 12, 2016. The notice indicates an effective move-out date of March 31, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on February 15, 2016, three days after its posting. I also note that the tenant applied to cancel the 1 Month

Notice on February 19, 2016 and confirmed in the “details of the dispute” section of his Application that he received the notice and was disputing it at this hearing.

At the hearing, the landlord verbally requested an Order of Possession.

Preliminary Issue – Dismissal of Tenant’s Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant’s entire Application dismissed without leave to reapply.

Issues to be Decided

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

Background

The landlord testified that this month-to-month tenancy began on November 1, 2005. The landlord stated that monthly rent in the current amount of \$720.00 is payable on the first day of each month. The landlord confirmed that rent was initially \$575.00 on the written tenancy agreement at the beginning of this tenancy but it was legally increased over time with legal notices of rent increase. The landlord provided a copy of the written tenancy agreement for this hearing. The landlord confirmed that a security deposit of \$287.50 was paid by the tenant and the landlord continues to retain this deposit.

The landlord issued the 1 Month Notice, indicating that “the tenant is repeatedly late paying rent.” The landlord stated that the tenant has been late paying rent more than three times during this tenancy. The landlord provided a rent ledger for late payments during this tenancy from August 2015 to March 2016. The landlord stated that rent of \$480.00 is unpaid for this tenancy and that the tenant only made a partial rent payment of \$330.00 on April 1, 2016.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. As per the landlord’s testimony, rent is due on the first day of each month.

Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...”

I find that the landlord provided undisputed evidence that the tenant paid rent late more than three times from August 2015 to April 2016. The tenant only paid partial rent of \$330.00 on April 1, 2016, after the effective date of the 1 Month Notice, so no question of waiver of the notice arises. Accordingly, I find that the landlord's 1 Month Notice was issued for a valid reason and it complies with section 52 of the *Act*.

Section 55(1) of the *Act* reads as follows:

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.

Based on my decision to dismiss the tenant's Application and my finding that the landlord's 1 Month Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, March 31, 2016. Accordingly, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire Application is dismissed without leave to reapply.

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 12, 2016