



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC MNR FF

Tenant: CNC LAT MNDC MNROLC PSF FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 13, 2018.

The Landlord (and her counsel) and one of the Tenants, D.R., attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both sides confirmed receipt of the each other's application package/Notice of Hearing. The Tenant also acknowledged receipt of the Landlord's evidence package. The Tenant stated he had not yet served the Landlord with his evidence, only the Notice of Hearing. As discussed during the hearing, since this evidence was not served in accordance with the rules of procedure, and was not given to the Landlord, I will not allow it to be submitted or considered in these proceedings. The Tenant only provided oral testimony during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

I will also consider the Landlord's application for an order of possession as it is related to the above ground. However, the Landlord's application for a monetary order is dismissed, with leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee for their application?

Background and Evidence

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy.

The Landlord stated that one of the reasons she issued the Notice is because the Tenants re repeatedly late paying rent. The Landlord testified that she served the Notice, in person, to the Tenants on January 4, 2018, and the Tenant acknowledged receipt of the Notice on that day. The Landlord provided a copy of the tenancy agreement into evidence which shows that rent is due on the first of the month and that they hold a security deposit in the amount of \$885.00.

The Landlord stated that Tenant has paid rent late numerous times in the past year. The Landlord provided copies of money orders from the Tenant to highlight when the payments were made. The Landlord also provided a spreadsheet to show that rent was paid late as follows:

Rent paid by Tenant on:

- May 2, 2017
- June 6, 2017
- July 9, 2017
- August 5, 2017
- September 3, 2017
- October 3, 2017
- November 5, 2017
- December 14, 2017
- January 5, 2018
- February 2, 2018

The Tenant acknowledged paying rent late but stated that he thought it was okay because the Landlord didn't take issue with it until their relationship went downhill. The Tenant stated that there is an issue with the fireplace which has been a cause of distress for both parties. The Tenant also stated that there were a few months where he had difficulty getting the money to the Landlord by the first of the month because of the nature of how he is paid through his work.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of her Notice. The first issue the Landlord identified on this Notice was:

Tenant is repeatedly late paying rent.

As per the tenancy agreement provided into evidence, it is clear that rent is due on the first of the month. Further, it is clear the Tenant has been late paying rent multiple times. I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

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.

Based on the evidence before me, I find there is substantially more than 3 times where rent has been paid late. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. Since the Tenant has paid rent until the end of March 2018, I find the Landlord is entitled to an order of possession effective **March 31, 2018**, after service on the Tenants.

As the Landlord was successful with her application, I grant her the recovery of the filing fee against the Tenant, pursuant to section 72 of the *Act*. I authorize the Landlord to retain \$100.00 from the Tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **March 31, 2018**, after service on the Tenants. This order must be served on the tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I authorize the Landlord to retain \$100.00 from the Tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee.

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 15, 2018

Residential Tenancy Branch