



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION DBA NORTHWOODS VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was scheduled to consider the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent. The agent LN (the "landlord") primarily spoke for the landlord.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice and evidentiary materials. I find the tenant was served in accordance with section 88 of the Act. The landlord confirmed receipt of the tenant's application for dispute resolution. The landlord stated that they were not in receipt of 1 page of the tenant's evidence. As advised to both parties at the hearing, and in accordance with Rules of Procedure 3.17, 3.19 and section 71(2)(c) of the Act, as I find that the inclusion of the tenant's 1 page of documentary evidence does not subvert the principles of procedural fairness and natural justice I found that the evidence was sufficiently served.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in June, 2017. The monthly rent is \$2,299.00. The tenancy agreement provides that the rent is due on the first of each month. The parties entered into an agreement by a letter dated November 20, 2017 that the tenant would provide postdated rent cheques for December 2017 through April 2018 and the rent would be due on the 9th of each month. A copy of the letter drafted by the landlord's agent LN confirming the agreement was submitted into evidence. The landlord did not state that the intention of the agreement was to retroactively forgive all late payments.

The landlord gave evidence that prior to the agreement of November 20, 2017 the tenant was repeatedly late paying the monthly rent. The landlord testified that even after the agreement of November 20, 2017 the tenant made rent payments after the due date. The parties gave evidence that the rent cheque for November, 2017 was returned NSF. The landlord testified that the tenant made payment for November rent on November 21, 2017. The landlord said that rent for December, 2017 and January, 2018 were also received after the 9th as the initial cheques provided by the tenant were returned NSF. The landlord submitted into written evidence a copy of the ledger for this tenancy showing when payment was actually received. The landlord also included in the written evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued November 2, 2017 for the November rent arrears.

The tenant submits that the intention of the agreement entered by the parties on November 20, 2017 was to set a new date when rent is due, on the 9th of each month, and to waive the landlord's right to rely upon the past instances of late payment. The tenant submits that the agreement implicitly waives the landlord's right to treat the November 2017 rent as late. The tenant testified that while she agrees with the landlord's evidence that rent payment was late for the months of December 2017 and January, 2018, the 1 Month Notice was issued on the basis of only two late payments. The tenant also gave evidence that the reason for the late payment in December 2017 was due to an unforeseeable bank error.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has been repeatedly late paying rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy.

The parties agree that rent was paid late five times between June, 2017 and November, 2017. The parties gave evidence that they entered into an agreement that rent would be due on the 9th of the month from December, 2017 onwards. The landlord gave undisputed evidence that rent for December, 2017 and January, 2018 were received late, after the 9th of the month. The parties agreed on the evidence that the rent for November, 2017 was paid on November 21, 2017 along with a late fee of \$25.00.

The tenant submits that the agreement of November 20, 2017 waives the landlord's right to rely upon the earlier late payments to issue a 1 Month Notice. I do not find that the documentary evidence supports the tenant's interpretation. The letter of November 20, 2017 sets out that postdated cheques will be provided for December, 2017 through April 2018. While the parties agree that the date rent would be due for those months was agreed to be on the 9th, that is not recorded in the letter. The letter states that failure to adhere to the agreement will result in the landlord proceeding with eviction proceedings per an earlier correspondence of November 9, 2017. In the earlier letter the landlord wrote, "This letter serves as your final warning for repeated late payment and failure to pay rent by the first day of the month will result in eviction proceedings."

Based on the evidence before me I find that the reasonable interpretation of the correspondence is that the parties established a new method for when rent would be accepted. I find that there is insufficient evidence to support the tenant's interpretation that the agreement included a waiver of the landlord's right to rely upon past late payments to issue a 1 Month Notice. The landlord did not provide evidence that they intended the letter of November 20, 2017 to be a clean slate for this tenancy and that all past late rents were forgiven. It is clear from the contents of the letters that the landlord was providing the tenant with a warning but not waiving their right to pursue an order of possession should the tenant fail to abide by the terms of the tenancy agreement.

I find based on the evidence that the tenant was repeatedly late in paying the full amount of the rent, both before the letter of November 20, 2017 and after that date. I accept the landlord's evidence that the tenant was late in paying the monthly rent a total of eight times since the tenancy began in June, 2017. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an order effective 2 days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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 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 9, 2018

Residential Tenancy Branch