



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an application by the landlords for an Order of Possession pursuant to the *Residential Tenancy Act* (“the Act”) and for reimbursement of the filing fee.

The hearing was conducted via teleconference and was attended by both landlords, one of the tenants, and the tenants’ lawyer.

Preliminary Matter # 1

At the outset of the hearing the tenant requested an adjournment. The tenant stated he had been travelling extensively and had only within the previous few days had time to retain the services of a lawyer. The lawyer RK confirmed he had recently been retained and wanted time to review the matter.

The landlords objected to the granting of an adjournment. They testified they had been in frequent contact with the tenants regarding late payment of the rent and utilities payable by the tenants under the residential tenancy agreement since the tenancy started. They submitted letters and texts to the tenants addressing late payment. The female landlord testified it was important for her health considerations to have the application resolved as soon as possible due to her pregnancy, recent hospitalization, and stress.

The landlords testified they served the One Month Notice to End Tenancy for Cause in December 2017 and that they had made a written offer to allow the tenants to stay until March 15, 2018 before moving out.

The landlords testified the tenants were served with the Notice of Hearing and documentary evidence by registered mail on February 22, 2018. Further to Section 90 of the Act, service is deemed to have taken place on February 27, 2018, the fifth day after mailing.

The tenants did not dispute the evidence regarding service. The male tenant testified he was out of the country a great deal and was therefore unable to collect the registered mail addressed to him. He said he needed more time to review the documents.

The landlords submit the tenants had ample time to prepare for the hearing in the five months since the service of the One Month Notice. They further testified one of the tenants had not been travelling, was available to collect mail, knew of the proceedings, and could have kept the other tenant informed.

I have considered Rule 7.9 of the Residential Tenancy Branch Rules of Procedure which provides the criteria for granting an adjournment:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I heard testimony from both parties with respect to the adjournment. The tenants have an obligation to arrange for collection of their mail and to promptly retain the services of a lawyer if they desire to do so. The tenants could not demonstrate on a balance of probabilities that their right to a fair hearing was prejudiced in any way by the continuation of the hearing. They presented no evidence they needed an adjournment to work on a solution or to gather evidence.

I declined to grant an adjournment.

Preliminary Matter # 2

The landlords stated that the tenants were keeping a pet in the house in violation of a provision of the tenancy agreement. They submitted an Amendment to an Application for Dispute Resolution dated February 27, 2018 requesting an Order that the tenants pay a pet security deposit which was served on the Tenants by registered mail on April 10, 2018.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the issue regarding the pet security is unrelated to the primary request for an Order of Possession to end the tenancy and pursuant to Rule of Procedure 2.3, I decline to allow the amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession pursuant to Section 47(1)(b) of the *Act* because the tenant was repeatedly late paying rent and whether the landlords are entitled to recover the filing fee for the application pursuant to Section 72 of the *Act*.

Background and Evidence

The parties agreed the month to month tenancy began on May 15, 2017 with rent of \$2,650.00 payable on the first of each month with a security deposit of \$1,325.00 paid. They signed a tenancy agreement on May 9, 2017

The parties agreed that the tenants had been late paying rent for the months of July, September, October and December in 2017 and for February and April in 2018. The tenant stated he had been very busy travelling in this period and had been out of the country a great deal. He testified he did not think it mattered if the rent was a few days late in any event. He said the landlords acquiesced to the late payments and did not complain.

The landlords testified that they continually brought the matter of late payments of rent and utilities to the attention of the tenants. They submitted correspondence in which they frequently asked the tenants about late payment of rent and utilities.

The landlords testified the One Month Notice to End Tenancy for Cause (“One Month Notice”) providing the reason that the tenants were repeatedly late in paying rent was served by posting on the tenants’ door on December 5, 2017. The tenant did not dispute receiving this Notice or provide any testimony regarding the date it was received.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline # 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions.

From the testimony of both parties, I find there is no dispute that the tenants were late paying rent six times in a 10-month period. Despite the tenants’ testimony that the landlords acquiesced to the late payments, I find it is not relevant how the landlords may have reacted to the late payments. I find what is relevant is that the parties entered into a legal contract (the tenancy agreement) that obligated the tenants to pay rent on the first of each month and the parties agree that the tenants seldom met that obligation during this tenancy.

Based on the landlord’s undisputed testimony I find pursuant to Section 90 of the Act, service is deemed to have taken place of December 8, 2017, the third day after posting.

Section 47 (4) of the Act allows a tenant up to 10 days after the date the tenant receives the notice to file an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause. Section 47(5) states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the tenants have filed an Application for Dispute Resolution seeking to cancel the One Month Notice to End Tenancy issued on December 5, 2017 I find the tenants are conclusively presumed to have accepted the tenancy and must vacate the rental unit, pursuant to Section 47(5).

Conclusion

Based on the above, I grant the landlords an Order of Possession effective two days after service on the tenants. This Order must be served on the tenants. If the tenants fail to comply with this Order, the landlords may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

I grant the landlords a Monetary Order pursuant to Section 67 in the amount of \$100.00 being the fee paid by the landlords for this application. If the tenants fail to comply with this Order, the landlords may file the Order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: May 03, 2018

Residential Tenancy Branch