



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHUNGHWA INVESTMENT (CANADA) CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL
 MT, CNC, OLC, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order for Possession on the basis of One Month Notice to End Tenancy for Cause (repeatedly late rent payments); the Landlord also requests an Order for payment of the \$100.00 filing fee. The Tenants have filed a cross-application requesting additional time to dispute the Notice to End Tenancy, an Order cancelling the Notice, an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement and for payment of the \$100.00 filing fee.

Two Agents for the Landlord both appeared for the scheduled hearing. Both Tenants were also present. I find that the notice of hearing was properly served and that evidence was submitted by all parties. The Tenants did state that the evidence package was only delivered to them through regular mail which they only received one day prior to the hearing.

The Landlord’s Agent, SA, stated that she posted it on the door and sent it by two registered mail packages; when confirming this, it appears that she may have posted it on the door of a neighboring unit in error. However, tracking of the registered mail numbers provided show that both packages were sent to each Tenant on May 3rd with signatures noted from a pickup on May 7, 2018.

I note that the Landlord filed additional evidence with the Residential Tenancy Branch seven days prior to this hearing. As the Tenant stated he had read through all the materials overnight and had no questions concerning its content, I deem service to have been adequate and allowed the hearing to resume, as there was no apparent prejudice

to the Tenants. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Are the Tenants entitled to an extension of time to dispute the One Month Notice to End Tenancy, pursuant to section 66(1) of the Residential Tenancy Act ("Act")?

If so, should the One Month Notice to End Tenancy be cancelled pursuant to section 47 of the Act? If not, is the Landlord entitled to an Order for Possession pursuant to section 55 of the Act?

Are the Tenants entitled to any additional order compelling the Landlord to comply with the Act, regulations and tenancy agreement, pursuant to section 62 of the Act?

Is either party entitled to reimbursement of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began in 2013 and the Tenants agreed to pay \$1,050.00 per month. Over the years, the rent was adjusted and is currently \$1,090.00 per month, with a \$500.00 security deposit. The tenancy agreement is not a standard form document, as the Landlord submitted a signed "Tenant Estoppel Certificate" indicating that the lease commenced on October 1, 2013. There is no date stipulated requiring payment on a particular date, only that "the current monthly basic rent is \$1050.00, plus including heat/hydro/hot water." The Landlord argues that it is simply common sense that every tenant pay promptly on the first of every month, even if it is a Sunday or statutory holiday when banks are closed.

The Landlord served a One Month Notice to End Tenancy dated April 10, 2018, citing the reason as being repeatedly late rent payments with an effective vacancy date of May 31, 2018. It was sent by registered mail. The Tenants provided evidence from Canada Post which show that the package was not sent to a centre for pickup, but

rather, was delivered back to a sorting station and it was only retrieved at their local office after two attempts, on April 30th, 2018. The Tenants ask for the additional time to dispute the Notice due to the mail delivery issues at Canada Post.

The reasons for the eviction are based on a claim by the Landlord of repeated late rent payments. Evidence was provided in the form of a handwritten ledger dating April 1, 2017 to April 1, 2018, as well as several bank statements. The Tenants reviewed this ledger and testified that the "date paid" was inaccurately listed, as they provided post dated cheques for a year and that the dates only really reflect the date that the Landlord processed those cheques, on his own volition. The Landlord stated during his testimony that he normally posts cheques on the 1st or 2nd of each month, presumably when all cheques are received from all tenants.

The Tenants admit that there was one late payment in August of 2017, which they claim was due to no fault of their own. The bank records show that in August of 2017, there was a bounced cheque which was paid up on August 15th. The Tenants stated that this was the result of the Landlord serving a Notice to End Tenancy for renovations in June or July of 2017; that notice later proved invalid, but prior to that, the Tenants were operating with the understanding that their last month's rent would be waived pursuant to the Act and they used their funds for a down payment on a home, as they were told they had to move out.

The Landlord then attempted to process the August post-dated cheque and it was returned by the bank. The Tenants state they had explained the issue with the funds and that the confusion over the eviction had resulted in funds only being available mid-month. The Tenants were upset with the fact that their cheque had been cashed at all, and they told the Landlord that he would need to cover their bank service charge for the returned cheque, as he had promised them he would not process it; the expense was \$24.00 and the ledger shows \$24.00 in rent arrears in November which is the amount the Tenants shorted the rent that month because they did not receive reimbursement for their bank charge.

By this time, the Tenants were concerned that they had many post-dated cheques with the Landlord and that he would continue to cash them, even though it was clear he was in the process of obtaining permits to renovate the building, which would require a vacant building. The Tenants state that they had discussions with the Landlord about the method of payment and that the Landlord agreed to destroy or return the remaining post-dated cheques and would accept direct deposit from the bank instead. Copies of

emails were provided by the Tenants as evidence of these communications and their understanding of how payments would be made.

From about September of 2017 onwards, the Tenant, AP, states that she would attend to the bank at the start of each month and the rent money was transferred over. She states that she was never notified about any concerns about late payments after that. The Landlord admits that there was never an issue about rent being paid each month, but he noted that on January 1st, payment was received on the 2nd; and in April it was received on April 3rd, which he considers to be late. The Tenant states that January 1st was a statutory bank holiday as was April 1/2nd – and so the payments were made the first day the bank was opened and she was never notified of any concerns in the past several months.

The Tenant DH provided documentary evidence of the Landlord going through a process with the City of Vancouver to relocate tenants for the renovation plans and permits. In an email dated March 9, 2018, the Landlord states that the residents of this particular rental unit are entitled to a payment of \$5,360.00. The Tenant states that other tenants have moved out but have had great difficulty obtaining their payment under that program from the Landlord.

A copy of a March 2018 email from another former tenant was also submitted into evidence, wherein the tenant states she is waiting for her compensation from the Landlord and asks him when it would be paid. The Tenants argue that this entire Application to evict their family is highly suspect, given the issues and timing with the Landlord's application for permits under the tenant relocation program. They argue that there was no expression of any concern over the method or timing of the monthly rent payments until it became apparent that money would need to be paid under the city program, and then the Landlord hired Vancouver Eviction Services and they decided to claim that rent was repeatedly late, warranting their removal from the property. The Landlord declined to comment on this argument, stating that it was a separate issue from this eviction.

Analysis

The Notice to End Tenancy was served April 10th but due to unforeseeable delays, it was only made available at the post office on April 25, 2018; accordingly, pursuant to sections 88 and 90 of the Act, I find that it was deemed to be served five days later, on April 30th. The Tenants must dispute a One Month Notice within ten days of receiving it, under section 47(4) of the Act. I allow additional time for the delivery of the Notice, as

such, I find the tenants were entitled to apply to dispute the Notice by May 9, 2018. As their Application was filed on April 30th, I find that the Tenants have disputed the Notice to End Tenancy properly and within a reasonable time frame.

The Notice to End Tenancy for Cause is in proper form and I find that the Landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I now turn my attention to the reason stated for the Notice, that being “*Tenant is repeatedly late paying rent.*”

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby 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...

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...

Section 26(1) of the *Act* establishes that “*a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*”

The Landlord argues that the rent is always due on the first of every month, even if it is a statutory holiday; at the same time, he testified that he often processes cheques on the 1st or 2nd of each month; the Tenant stated that their post-dated cheques were often processed after the 1st of the month, as evidenced by the Landlord's own ledger from 2017.

That ledger shows the post-dated cheques being marked as “paid” on the 3rd of the month in April and May of 2017, for example. The Landlord suggested that he was told by the Tenants to hold back the cheques some months to ensure cash was available, and this was the reason for the late processing of the cheque..

The Landlord also argued that payment of rent on the 1st of every month is “common sense” and that he should not have to follow up with every tenant on every payment.

However, I have reviewed the tenancy agreement and find that there is no clear date that the rent payment is due. I find that the parties have, by their past actions, agreed it is due at the start of each month in advance, but that there has been variation on the actual date the payment is processed – depending on whether the 1st lands on a Sunday or statutory holiday or when the Landlord attends to depositing rental cheques.

I find that the Tenants were late in August of 2017 by paying mid-month. However, their explanation was not disputed by the Landlord and I accept that they were under the mistaken belief that they would be entitled to a waiver of that month's rent because of the eviction notice delivered by the Landlord. That notice prompted them to seek a new home, tying up their finances that month. This is a reasonable explanation and the Landlord played a part in their inability to pay rent after being served the eviction notice, which proved to be invalid.

The issue which occurred in the fall of 2017 with payment of rent is also partly the fault of the Landlord, who had agreed not to process the post-dated cheques as the Tenant was making direct deposits by way of their new arrangement; by cashing the cheque at the same time the Tenant electronically paid the rent, it resulted in insufficient funds. The Landlord did not dispute that the parties had arranged for the direct deposits and that the post-dated cheques would not longer be honoured. That process of payment has continued each month since that time, without complaint by the Landlord.

As approximately nine months has transpired since the August late payment, and the Landlord has failed to issue any communication to the Tenants regarding concerns about payments, I find that the Landlord is estopped from now arguing that the direct deposits on the first banking day of the month is considered to result in a "late payment" which warrants an end to the tenancy due to three such late payments in the past year.

For my reasons stated above, the Landlord has failed to meet the burden of proving that these Tenants are repeatedly late with rent payments. I grant the Tenants' Application to cancel the One Month Notice to End Tenancy and dismiss the Landlord's Application for Dispute Resolution in its entirety without leave to reapply. The Notice issued on April 10, 2018 is of no force or effect; the tenancy shall continue until such time as it is ended properly with notice from either party. The Tenants were successful in cancelling the Notice, therefore I award the \$100.00 filing fee, which they are entitled to deduct from future rent.

Conclusion

The One Month Notice to End Tenancy for Cause dated April 10, 2018 is hereby cancelled. The Tenancy shall continue until terminated with proper notice by either party. The Tenants are entitled to deduct the sum of \$100.00 from future rent in satisfaction of an award for 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: June 5, 2018

Residential Tenancy Branch