



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' 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 their 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.

As the tenant confirmed that they received the 1 Month Notice posted on their door by the landlord on May 16, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenants handed them a copy of the tenants dispute resolution hearing package on May 24, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Although the tenants did not serve the landlord's with copies of their written evidence, the landlord confirmed that they had copies of the 1 Month Notice and the Tenancy Agreement for this tenancy, the only written evidence the tenants supplied. The tenants and their advocate confirmed that they had received and reviewed the landlord's Payment History, a document the tenants had requested from the landlord. I find that these written evidence documents were duly served in accordance with section 88 of the *Act*.

The landlord provided the Residential Tenancy Branch (the RTB) with a copy of a document signed by Tenant CPO on June 12, 2018, entitled Notice to Landlord. In this document, Tenant CPO confirmed that the tenants intended to vacate the rental unit on

June 30, 2018, the same effective date identified by the landlord in the 1 Month Notice. While Tenant CPO confirmed that they signed that document, they claimed that they were not aware that this was the tenants' own written notice to end this tenancy on June 30, 2018. The landlord testified that they had not provided the tenants with a copy of the Notice to Landlord document as part of the written evidence for this hearing. Since no copy of the Notice to Landlord document was provided to the tenants, I have not taken into consideration this written evidence as it was not served in accordance with section 88 of the Act.

As Tenant CPO confirmed having signed this document and did not dispute the accuracy of the contents of this document, I have taken into account this sworn testimony as part of my decision-making with respect to this dispute. However, in so doing, I note that this document was signed well after the 1 Month Notice was issued and would have no real bearing on the reasons cited in the landlord's 1 Month Notice, the issue before me.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on January 1, 2017. When the first term expired, the tenancy continued as a month-to-month tenancy. Initial monthly rent was set at \$1,900.00, payable in advance on the first of each month. The current monthly rent is \$1,976.00. The landlord continues to hold the tenants' \$950.00 security deposit.

The landlord's 1 Month Notice entered into written evidence by the tenants and requiring an end to this tenancy by June 30, 2018, identified the following reasons for ending this tenancy for cause:

Tenant is repeatedly late paying rent...

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

The landlord entered into written evidence a copy of a detailed document outlining payments received and NSF charges applied during the entire course of this tenancy. The landlord also provided sworn testimony that monthly rent charges due on the first of each month were not fully paid until the following dates:

Date of NSF Charge on Tenants' Direct Deposit Payment	Date of Full Payment of Rent Owning
February 5, 2018	February 7, 2018
March 5, 2018	March 6, 2018
April 6, 2018	April 10, 2018
May 3, 2018	May 8, 2018

In addition, the landlord gave undisputed sworn testimony that the tenants were late in paying their monthly rent by direct deposit on August 9, 2017, September 6, 2017, October 6, 2017, and November 20, 2017. The landlord testified that there were sufficient funds in the tenants' bank account to pay their December 2017 and January 2018 direct deposit rent payments on time.

At the hearing, neither the tenants nor their advocate questioned the accuracy of the dates identified by the landlord as to when full payments for rent were made. Rather, the tenants' advocate questioned the landlord as to the process that the landlord followed in notifying the tenants that there were insufficient funds in their bank account to honour the direct deposit monthly rent payments that the landlord claimed had been repeatedly late. The landlord explained that they would not act on these NSF payments until such time as they were alerted by the bank that there were insufficient funds in the tenants' bank accounts to honour these payments. This would lead to an understandable delay, as the bank would not immediately notify the landlord of these NSF direct deposits. When this occurred, the landlord would contact the tenants to seek the missing portion of the rent payment. The landlord maintained that it was the tenants' responsibility to ensure that sufficient funds were in their bank account to pay their monthly rent on time.

Tenant CPO confirmed that they sometimes received calls from the landlord to report that the funds transferred to them from overseas by their father had not yet been placed in their bank account by the bank and that rent was owing. Tenant CPO maintained

that there was sometimes "issues" with the bank which had not transferred these funds over to their account quickly enough. The tenants and their advocate provided no written evidence to confirm that there had been any type of bank errors in the transfer of funds into the account they were using to pay their rent by direct deposit.

The tenants' application for dispute resolution read in part as follows:

...We have had about three late payments in over a year and paid them within the 5 days of the due date. We strongly believe that the landlord as they alleged, wants to evict us and we are foreign students studying in SFU to increase the rent they said someone is willing to pay more.

At the hearing, the tenant's advocate said that the landlord was only seeking an end to this tenancy because they could obtain more rent from new tenants.

The landlord testified that they were surprised that the tenants had not yet vacated the rental unit, as the tenants had signed their own written notice to end this tenancy by June 30, 2018. The landlord said that rent was paid and accepted for June 2018, but no rent has been accepted from the tenants for July 2018. The landlord said that new tenants have signed a tenancy agreement to occupy this rental unit in August 2018.

Analysis

When a tenant applies to cancel a notice to end a tenancy, the burden of proof rests with the landlord to demonstrate that the Notice was issued for valid reasons and that the landlord is entitled to an Order of Possession.

Paragraph 47(1)(b) of the Act reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(b) the tenant is repeatedly late paying rent;...

RTB Policy Guideline #38 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.”

There is no dispute that the tenancy agreement requires the tenants to pay all of the rent by the first of each month.

The landlord has provided convincing evidence that the tenants have been late in paying their rent on a recurring basis on all but two of the months from August 2017 until the landlord issued the 1 Month Notice in May 2018. Whether or not complications arose as a result of transferring funds conveyed to the tenants by their father, the tenants are responsible for ensuring that funds to be provided to the landlord by way of direct deposit are in the bank account provided to the landlord for payment of their rent by the due date for the monthly rent payment. I give little regard to the claim made by the tenant's advocate that the landlord was in any way responsible for these late payments by direct deposit. It is the tenants' responsibility to ensure that full monthly rent payments are provided to the landlord, whatever the method of payment selected by the tenants to pay their rent. In coming to this determination, I note that the tenants' own application for dispute resolution confirmed that there had been at least three late rent payments, which would qualify the landlord for ending the tenancy on the basis of repeated late payments of rent as was identified in the landlord's 1 Month Notice.

I am satisfied that there is a pattern of late payment of rent throughout the months leading up to the landlord's issuance of this 1 Month Notice. Since at least one of the reasons cited in the 1 Month Notice for ending this tenancy for cause were valid, there was no need to hear any testimony with respect to the other reasons identified in the landlord's 1 Month Notice. I dismiss the tenants' application to cancel the 1 Month Notice.

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.*

As I find that the landlord's 1 Month Notice complies with all of the requirements set out in section 52 of the *Act* as to form and content, I issue a 2-day Order of Possession in the landlord's favour in accordance with sections 47(1) and 55 of the *Act*.

Since the tenants' application is dismissed, I make no order as to their application to recover the filing fee for their application.

Conclusion

I dismiss the tenants' application to cancel the landlord's 1 Month Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the tenants' application to recover the cost of their filing fee from the landlord.

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: July 05, 2018

Residential Tenancy Branch