



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47 of the *Act*.

The tenant DH appeared on behalf of both tenants ("the tenants"). The landlord TB appeared on behalf of both landlords ("the landlords"). Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlords acknowledged receipt of the tenants' Notice of Hearing and Application for Dispute Resolution sent to her by email from the tenants on June 2, 2018. I find the landlords have been sufficiently served on June 2, 2018, in accordance with section 71(2)(b) of the *Act*.

I note that section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the tenant's application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

Issues to be Decided

- Are the tenants entitled to a cancellation of the One Month Notice under section 47 of the *Act*;
- If the tenants are not successful in cancelling the One Month Notice, is the landlord entitled to an Order of Possession under section 55 of the *Act*.

Background and Evidence

The parties agree on the following facts:

- The parties entered into a month-to-month residential tenancy agreement starting August 15, 2011 for rent of \$2,100.00 a month payable on the first day of each month;
- At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$1,050.00;
- The landlords posted the One Month Notice to the tenants' door on May 10, 2018;
- A copy of the One Month Notice issued on May 7, 2018 was submitted into evidence attached to a Proof of Service document providing an effective vacancy date of June 30, 2018;
- In the One Month Notice attached to the Proof of Service document, the landlords selected the following as reason for issuance of the Notice:
 - *The tenant is repeatedly late paying rent;*
- The tenants applied for dispute resolution on May 23, 2018, to dispute the Notice.

The tenant acknowledged being late four times in paying rent within the past twelve months because she did not receive expected income in time to make the payments when they were due.

Analysis

I find the One Month Notice was posted to the tenants' door on May 10, 2018. Pursuant to section 90, the deemed date of service is May 13, 2018, three days after posting.

Section 47 of the *Act* provides that upon receipt of a One Month Notice, 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 One Month Notice.

The landlords must now show on a balance of probabilities, that it is more likely than not, that the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenants have been repeatedly late paying rent.

The parties both acknowledged the tenants have been late paying rent four times in the last twelve months. While the tenant acknowledged the late payments, she stated this was caused by a delay in receipt of her income over which she had no control. The landlord did not accept the tenants' reasons for late payment and I find this is not adequate reason to justify being late paying rent on the four occasions.

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 the tenants were late paying rent four times in a 12-month period. I therefore find the landlords have established cause for ending the tenancy.

The tenants' application to cancel the One Month Notice is therefore dismissed.

I now consider whether the landlord is entitled to an Order of Possession pursuant to section 55.

Pursuant to section 55(1), the director **must** grant to the landlord an Order of Possession of the rental unit if the landlords' notice to end tenancy complies with section 52 and the tenants' application is dismissed.

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 the One Month Notice to End Tenancy for Cause issued by the landlord on May 7, 2018 complies with the requirements set out in section 52.

As I have determined the landlords' notice to end tenancy form complies with section 52 and I have dismissed the tenants' application, I grant the landlords an Order of Possession effective two days after service upon the tenants.

Conclusion

I grant the landlords an Order of Possession which is effective two days after service on the tenants. This Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order with the Supreme Court of British Columbia 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: July 31, 2018

Residential Tenancy Branch