



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION ON A ONE MONTH NOTICE FOR CAUSE AND A REVIEW HEARING

Dispute Codes CNC, OPR-DR, MNRL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On August 17, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act").

On August 23, 2018, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On August 30, 2018, the Landlord was granted an Order of Possession and a Monetary Order for recovery of the filing fee on this Application.

On September 6, 2018, the Tenants filed an Application for Review Consideration of the above Direct Request proceeding based on fraud. On September 12, 2018, an Arbitrator determined that the Landlord obtained the Order of Possession and Monetary Order fraudulently and ordered that this matter be set down as a Review Hearing, to be heard in conjunction with the Tenants' hearing on October 9, 2018.

On September 4, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for Unpaid Rent and Utilities pursuant to Section 67 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants and Landlord attended the hearing. As well, E.Z. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package by registered mail on August 24, 2018 and the Landlord confirmed receipt of this. As well, the Tenants advised that they served the Landlord with the Review Consideration decision and the Landlord confirmed receipt of this. Based on this undisputed testimony, and in accordance with

Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and Review Consideration decision.

The Landlord advised that he served the Tenants the Notice of Hearing packages by hand on September 4, 2018 and the Tenants confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing packages.

Both parties advised that they did not serve their evidence on the other party. As such, none of the evidence submitted was considered. However, both parties were advised that they could speak to this evidence and provide testimony regarding it during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to an Order of Possession for Unpaid Rent?
- Is the Landlord entitled to a Monetary Order for Unpaid Rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on February 1, 2018 and rent was established at \$1,600.00 per month, due on the first day of each month. A security deposit of \$800.00 was also paid.

Both parties agreed that the Notice was served to the Tenants in person on August 10, 2018. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The effective date of the Notice was September 10, 2018.

Both parties agreed that the Tenants paid rent late in April, May, June, and August 2018. The Tenants advised that they were experiencing health issues, but the Landlord was great in

working with them and did not say anything when the rent was not paid on time. They stated that they did not have the Landlord's written authorization to pay rent late. They advised that they had family loan them some money for one particular month; however, the health issues are in the past now and they will not have trouble paying rent on time in the future.

There was conflicting testimony from the parties with respect to August, September, and October 2018 rent. The Tenants advised that they paid the rent for these months via electronic transfer, but the Landlord refused to accept it. The Landlord stated that the Tenants did not pay the rent for these months. The Landlord made an Application for a Direct Request proceeding seeking an Order of Possession based on a 10-Day Notice for Unpaid Rent served on August 10, 2018. The Landlord was granted an Order of Possession; however, the Tenants filed an Application for Review Consideration of this decision based on fraud, and this decision was overturned as there were two versions of the Landlord's 10-Day Notice for Unpaid Rent. During the hearing, the Landlord acknowledged that he had one 10-Day Notice for Unpaid Rent indicating a rent amount owing and one 10-Day Notice for Unpaid Rent with no rent amount owing. As this was "so long ago" the Landlord could not remember why he did this, which one he served to the Tenants, or if he served both.

The Landlord also applied on September 4, 2018, seeking a Monetary Order and outlined in the details of dispute that "the amount requested is including the unpaid rent and utilities." In this Application, the amount the Landlord is seeking is \$1,500.00.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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;

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy where the Tenants are 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 undisputed evidence before me is that the tenancy agreement requires the Tenants to pay all of the rent by the first of each month and that rent was not paid in full on the first of each month more than three times since April 2018. Furthermore, there is no substantiated evidence before me that the Tenants were allowed to pay rent late contrary to the tenancy agreement. Consequently, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, the Landlord allowed more time for the Tenants to vacate the rental unit. As such, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on October 31, 2018**.

Under the Review Hearing, with respect to the Landlord's Application for an Order of Possession due to unpaid rent, I dismiss this Application in its entirety as I am not satisfied of the validity of the 10-Day Notice for Unpaid Rent. Consequently, pursuant to Section 82 of the *Act*, I set aside the Order of Possession and Monetary Order that were granted on the Direct Request proceeding decision of August 30, 2018.

With respect to the Landlord's Application for the rent and utilities owing, the Landlord has not established how he determined \$1,500.00 was owing and there was a dispute between the parties on payments paid and received. As such, I dismiss the Landlord's Application with leave to reapply.

As the Landlord was unsuccessful in his Applications, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for either Application.

Conclusion

I dismiss the Tenants' Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2018 after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I set aside the Order of Possession and Monetary Order that were granted on the Direct Request proceeding decision of August 30, 2018 and I dismiss the Landlord's Application for an Order of Possession for unpaid rent without leave to reapply.

In addition, I dismiss the Landlord's Application for a Monetary Order for unpaid rent or utilities with 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: October 11, 2018

Residential Tenancy Branch