



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on August 18, 2018. The landlord testified that he received the notice of dispute resolution package but did not recall on what date. I find that the landlord was deemed served with this package on August 23, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I note that Section 78 of the *Act* states that the director may, with or without a hearing:

- (a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,
- (b) clarify the decision or order, and
- (c) deal with an obvious error or inadvertent omission in the decision or order.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June of 2013 and is currently ongoing. Monthly rent in the amount of \$1,037.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties but was not submitted for this hearing.

The landlord testified that on July 28, 2018 he served the tenant with a One Month Notice to End Tenancy for repeated late payment of rent with an effective date of September 30, 2018 (the "One Month Notice") by leaving a copy in the tenant's mailbox. The tenant confirmed receipt of the One Month Notice on July 28, 2018.

Both parties agree that the One Month Notice is not dated.

Both parties agreed that the tenant was late paying rent on the following months:

- January 2018;
- February 2018;
- March 2018;
- May 2018;
- June 2018;
- July 2018;
- August 2018; and
- September 2018.

Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenant on July 28, 2018, in accordance with section 88 of the Act.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

~~I find that the One Month Notice does not meet the form and content requirements set out in section 52 of the Act because it was not dated. I therefore find that the One Month Notice is of no force or effect.~~

~~As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the Act.~~

~~Section 72 of the Act states that if a landlord is ordered to pay an amount to the tenant the amount may be deducted from any rent due to the landlord.~~

Section 68 of the Act states that if a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Policy Guideline 11 states that in determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

I find that since the tenant testified that she received the One Month Notice on July 28, 2018 the tenant knew or ought to have known that the One Month Notice was signed on July 28, 2018. I find that the tenant is not unfairly prejudiced by amending the notice as the effective date on the One Month Notice has not yet elapsed. I amend the One Month Notice to include the date signed as July 28, 2018.

Upon review of the amended One Month Notice, I find that the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47(1)(b) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

As both parties agreed that the tenant was late paying rent for February, March, May, June, July, August and September of 2018, I find that the landlord was justified in issuing the tenant the One Month Notice. I therefore dismiss the tenant's application without leave to reapply.

Section 55 of the Act states that 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:

- the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I find that the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on September 30, 2018, pursuant to section 55 of the Act.

Conclusion

~~The One Month Notice is of no force or effect.~~

~~I issue a Monetary Order to the tenant in the amount of \$100.00.~~

I cancel the Monetary Order in the amount of \$100.00 issued on September 25, 2018.

~~The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.~~

The One Month Notice is amended to include the date signed as July 28, 2018.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2018**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 25, 2018

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **SEPTEMBER 28, 2018**
AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.