



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FFT LAT LRE MNDCT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice");
2. an order for the landlord to make emergency repairs;
3. a lock change authorization;
4. an order suspending or restricting the landlord's right to enter the rental unit;
5. compensation for various matters; and,
6. compensation for recovery of the filing fee.

A dispute resolution hearing was convened, and the landlord and tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

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 application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue.

I explained to the parties that I would be dismissing the tenants' claims 2 to 5, above, with leave to reapply. As such, this decision will only address claims 1 and 6, above.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If the tenants are not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession, pursuant to section 55 of the Act?
3. If the tenants are entitled to an order cancelling the Notice, are they entitled to compensation for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy began on August 1, 2017, and that he took possession of the rental unit in August 2017. The written tenancy agreement, which was submitted into evidence, reflected the name of the previous landlord just prior to the new landlord taking possession.

Monthly rent is \$1,400.00, which is due on the first of the month. The landlord testified that the tenants paid rent late on four occasions. The first occasion occurred on an undetermined date, and the landlord could not recall when that occurred. However, the tenants paid rent late on three subsequent occasions: on July 5, 2018, on August 3, 2018, and again on September 3, 2018.

Rent is paid by Interac e-transfer. Submitted into evidence are copies of the Interact e-transfer confirmations, which reflect sent dates corresponding to the dates provided above during the landlord's testimony and submissions.

On September 30, 2018, the landlord issued and served the Notice on the tenant R.B. in person. The Notice, a copy of which was submitted into evidence, indicated an end of tenancy date of October 31, 2018. Service was witnessed by a third party, "N.S." Page 2 of the Notice indicated that the tenancy was ending because of "Tenant is repeatedly late paying rent." In the Details of Cause(s) section of the Notice, it states: "Late rental payment for: -July (paid July 6th – see page 3) -August (paid August 3rd – see page 4) -September (paid September 3rd – see page 5)".

The tenant (R.B.) testified that due to the long working hours ("up at 5:30, not home until 10 or 2 in the morning"), he is only able to bank on Saturdays, and that when he executes an Interac e-transfer transaction, the transaction is posted to the next banking or business day. He testified that, about the rent for July 2018, the landlord "was well aware" of the potential late payment, and that the tenant would have the rent for him on July 5. Further, he testified that the landlord was always aware of the banking and late payment issues, and that he had never had any issues previously.

The tenant raised the question of why the landlord did not accept the e-transfers until sometime after they were sent. The landlord said that he does his reconciliation on Tuesdays. He further submitted that being able to only bank on a Saturday is not a reason to pay the rent late.

The parties both testified at length about the dates that transfers are sent, and when they were considered received.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based.

In this case, the landlord issued the Notice because the tenants were repeatedly late paying rent, testifying and providing documentary evidence that they were late paying rent.

Section 47(1) of the Act states that a landlord may end a tenancy if “the tenant is repeatedly late paying rent.”

What is meant by “repeatedly late”? Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent interprets this section of the Act to mean “Three late payments are the minimum number sufficient to justify a notice under these provisions.” And, while it does not matter whether the late payments were consecutive or not, the time between each late payment may be determinative. In this case, rent was paid late for July, for August, and again for September.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent. This is not the case here. The tenant did not dispute that he paid the late rent, but rather, that the operation of the Interac e-transfer system causes transactions to be posted on the next business or banking day. In assessing the banking documentation submitted by both parties, I find that the actual transfers of money—that is, the payments of rent—occurred on July 5, on August 3, and on September 3, 2018. Monthly rent is due on the first of the month as is required by the written tenancy agreement. With respect, it is a tenant’s responsibility to pay rent when it is due under a tenancy agreement, and when the tenant is paid by his or her employer or when a landlord accepts an e-transfer, is not a relevant factor in determining whether rent is paid on time.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has established the ground on which the Notice was issued.

As the landlord has met the onus of proving the ground on which he issued the Notice, I dismiss the tenants’ application for an order cancelling the Notice without leave to reapply. The Notice, dated September 30, 2018, is upheld. I further dismiss the tenants’ application for compensation for recovery of the filing fee.

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. Having reviewed the Notice, I find the One Month Notice to End Tenancy for Cause issued by the landlord complies with the requirements set out in section 52.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Conclusion

I grant the landlord an order of possession, which must be served on the tenants before November 28, 2018 and which is effective at 1:00 P.M. on Friday, November 30, 2018. This order of possession may be filed in, 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 Act.

Dated: November 15, 2018

Residential Tenancy Branch