



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, ERP, RP, LRE, AS, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant has applied to cancel a 1 Month Notice to End Tenancy for Cause dated October 29, 2018 ("1 Month Notice"), for an order for emergency repairs for health or safety reasons, for an order for regular repairs to the unit, site or property, for an order to suspend or set conditions of the landlord's right to enter the rental unit, for authorization to assign or sublet the rental unit, and to recover the cost of the filing fee.

The tenant, a co-tenant/agent XAS ("co-tenant"), a tenant agent VK ("agent"), the landlord, and two landlord agents ("landlord agents") attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However; only the evidence relevant to the issues and findings in this matter are described in this decision.

Both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties to be sufficiently served in accordance with the *Act*.

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant has indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and the filing fee at this proceeding. The balance of the

tenant's application will either be dismissed with or without leave to reapply which I will address later in this decision.

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

Copies of the tenancy agreements signed by the parties were submitted in evidence. There is no dispute that there were two previous fixed-term tenancies, the first of which began on February 1, 2006. The third and current tenancy agreement began on March 1, 2007, and reverted to a month to month tenancy after May 31, 2007. The monthly rent is currently \$1,080.62 per month and is due on the first day of each month.

The co-tenant stated that she vacated the rental unit; however, later admitted that she has not advised the landlord in writing so I will not address that further in this decision as an Order of Possession applies to all occupants in the rental unit. I find that confirming the status of the co-tenant is not necessary in this decision as a result.

The tenant confirmed that he received a 1 Month Notice on October 30, 2018. The 1 Month Notice alleges three causes. One of the causes is listed as repeated late payment of rent. The tenant disputed the 1 Month Notice on November 9, 2018, which is within the ten day timeline provided for under section 47 of the *Act*. The effective vacancy date indicated on the 1 Month Notice is November 30, 2018, which has passed. The tenant confirmed that he received both pages of the 1 Month Notice. The parties also agreed that the tenant has paid money for use and occupancy of the rental unit for December 2018.

During the hearing, the landlord testified that the tenant paid the rent late as follows:

2017

January 2017 rent paid on January 6, 2017

February 2017 rent paid on February 6, 2017
March 2017 rent paid on March 6, 2017
April 2017 rent paid on April 4, 2017
May 2017 rent paid on May 5, 2017
June 2017 rent paid on June 5, 2017
July 2017 rent paid on July 5, 2017
August 2017 rent paid on August 7, 2017
September 2017 rent paid on September 5, 2017

2018

January 2018 rent paid on January 5, 2018
February 2018 rent paid on February 5, 2018
March 2018 rent paid on March 6, 2018
April 2018 rent paid on April 4, 2018
May 2018 rent paid on May 5, 2018
June 2018 rent paid on June 5, 2018
July 2018 rent paid on July 10, 2018
August 2018 rent paid on August 4, 2018
September 2018 rent paid on September 5, 2018
October 2018 rent paid on October 3, 2018

Rent is due on the first day of each month. The tenant did not dispute that he paid the rent late and explained that he did so because he timed the payments with the utility bill dates. The parties agreed that the tenant was not provided with written permission to change the rent due date of the first day of each month.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice – RTB Policy Guideline #38 – Repeated Late Payment of Rent, states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of the evidence before me which includes at least nineteen late payments of rent, I find that the 1 Month Notice is valid based on repeated late payments of rent.

Therefore, I find it was not necessary to consider further testimony regarding additional late payments of rent or the two other causes listed on the 1 Month Notice.

I dismiss the tenant's application to cancel the 1 Month Notice as I find the 1 Month Notice is valid for repeated late payments of rent. I uphold the landlord's 1 Month Notice with an effective vacancy date of November 30, 2018. Section 55(1) of the *Act* applies and states:

Order of possession for the landlord

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.

[Emphasis added]

I have reviewed the 1 Month Notice and I find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act* **effective December 31, 2018 at 1:00 p.m.** Although I find the tenancy ended on November 30, 2018, I have granted an order of possession for December 31, 2018 at 1:00 p.m. as the parties confirmed that the tenant has paid for use and occupancy of the rental unit for December 2018.

As the tenant's application has been dismissed, I do not grant the filing fee.

I dismiss the severed portion of the tenant's claim described above, without leave to reapply. I have reached this decision as the tenancy ended on November 30, 2018.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply as the 1 Month Notice is valid and has been upheld.

The landlord has been granted an order of possession effective December 31, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the tenancy ended on November 30, 2018, I dismiss the severed portion of the tenant's claim described above, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 21, 2018

Residential Tenancy Branch