



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FFT

Introduction

This hearing was scheduled to consider the tenants' application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to the *Residential Tenancy Act* (the "Act");
- an order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present document service was confirmed. The tenants confirmed receipt of the landlord's 1 Month Notice dated December 3, 2018 and evidence. The landlords testified that while they received the tenants' application for dispute resolution of December 8, 2018 they did not receive evidence from the tenants. The tenants did were not able to articulate how they had served the landlords with their evidence. As the tenants' documentary evidence consists of correspondence with the landlords which the landlords would have had an opportunity to review and I find that its inclusion would not be prejudicial to the landlord I allowed the inclusion of those pieces of evidence that the landlords confirmed receiving on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Should the tenants recover the filing fee from the landlords?

Background and Evidence

The parties agreed on the following facts. This tenancy began in June 2016. The landlords assumed this tenancy in January 2018. The current monthly rent is \$1,300.00 payable on the first of each month. A copy of the tenancy agreement was submitted into evidence.

The tenants were late in paying rent in March, November and December, 2018, making payment on the second of the month. The tenants confirmed that they were late in paying the rent on those occasions stating that there were circumstances that led to the late payment and that payment was made as soon as possible.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, 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 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants have been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenants have been late paying rent for three months during the past year. I find that the tenants have been repeatedly late paying rent. Accordingly, I find that the landlords have shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

I find the tenants' submissions that they have made payment as soon afterwards as they could and their intentions to irrelevant. Pursuant to section 26(1) of the *Act* a

tenant must pay rent when it is due. The intentions of the tenants or the landlord's failure to remind the tenants or make accommodations do not remove or modify that requirement.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act* effective, January 31, 2019 the effective date of the 1 Month Notice.

As I find that this tenancy is ending, and as the tenants did not testify as to the portions of the *Act*, regulations or tenancy agreement that they believe the landlord is breaching, I dismiss the portion of the application seeking an order that the landlord comply.

As the tenants' application was not successful the tenants are not entitled to recover the filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **January 31, 2018**. Should the tenants or any occupant on the premises 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: January 11, 2019

Residential Tenancy Branch