



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

MB testified on behalf of the landlord in this hearing. 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.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with sections 88 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties acknowledged receipt of each other's evidence, I find that both parties were duly served with each other's evidence in accordance with section 88 of the *Act*.

The tenant confirmed that he was served with a 1 Month Notice dated December 26, 2018. Accordingly, I find the tenant deemed served with the 1 Month Notice on December 29, 2018, pursuant to sections 88 and 90 of the *Act*, 3 days after the notice was posted on his door.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for his application?

Background and Evidence

This month-to-month tenancy began in 2005, with monthly rent currently set at \$660.00, payable on the first of the month. The tenant paid a security deposit in the amount of \$260.00 each, which the landlord still holds.

The landlord served the tenant with the 1 Month Notice to End Tenancy on December 26, 2018 providing the following grounds:

1. The tenant is repeatedly late paying rent;
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
5. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
6. The tenant does not repair damage to the rental unit or other residential property;
7. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so;
8. The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
9. Non-compliance with an order under the Legislation within 30 days; and
10. The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The landlord testified that the tenant was repeated late in paying the rent, including the months of July, September, and December 2018. The landlord provided a bank statement in their evidentiary materials to show that the tenant's rent payments were not received on the first of the month as required by the tenancy agreement. The landlord testified that an arrangement was made for the tenant to pay by way bank transfer as of July 2018 as the landlord had difficulty collecting rent from the tenant on time.

The tenant does not dispute that the payments were not received by the landlord on the first of the month, but that the delays were due to the bank.

The landlord listed numerous reasons for why the landlord is also seeking an end to this tenancy including the fact that the tenant has stored piles of items on the property, which the tenant disputes are his. The landlord also testified that the tenant broke a window when the tenant was mowing the lawn, which is also disputed by the tenant.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause, including repeated late payments of rent.

The landlord's agents provided undisputed oral testimony and written evidence to support that the tenant has been late in paying his rent on at least three occasions. The tenant testified the landlord did not receive his payments on time on the 3 occasions noted by the landlord, but this was because the bank has failed to post his payments on the first of the month as he had requested.

RTB Policy Guideline #38 discusses the criteria for ending a tenancy for repeated late rent payments, and in particular when the delay is due to a bank error:

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.

I have considered the reason for the late payments, and I find that the number of times the payments were received late by the landlord from the tenant exceeds the criteria for an exceptional circumstance that was unforeseen by the tenant. I find that the tenant had ample time to address the issue by the time the 1 Month Notice was issued to him, but the tenant failed to do so. The onus falls on the tenant as required under section 26 of the *Act* to pay rent on time. I find that the repeated late rent payments meet the criteria for sufficient cause to end this tenancy under section 47(1)(b) of the *Act*. Therefore, I am dismissing the tenant's application to cancel the 1 Month Notice dated December 26, 2018 without leave to reapply.

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 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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy will end on the effective date of the Notice. As section 47(2)(b) states that the effective date of the 1 Month Notice must be "the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement", which in this case is the first day of the month, the effective date of the 1 Month Notice will be corrected to February 28, 2019 as pursuant to section 53 of the *Act*.

I find that the landlord is entitled to an Order of Possession for February 28, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by February 28, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in their application, the tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of February 28, 2019.

I grant an Order of Possession to the landlord February 28, 2019. 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: February 12, 2019

Residential Tenancy Branch