



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, MNDCT, LRE, LAT, FFT

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;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Landlord B.D. (the "landlord"), the landlord's assistant and the tenant 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 she served the landlords with her application for dispute resolution via registered mail sometime in March of 2019. The landlord testified that she received the tenant's application for dispute resolution sometime in March of 2019. I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

The tenant testified that she served the landlords with her amendment via registered mail sometime in April 2019. The landlord testified that she received the tenant's

amendment sometime in April of 2019. I find that the landlord was served with the tenant's amendment in accordance with sections 88 and 89 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*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

Issues 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*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2014 and is currently ongoing. Monthly rent in the amount of \$900.00 is payable on the first day of each month. Rent is paid in cash and the landlords issue a receipt to the tenant on the date rent is paid. A security deposit of \$500.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant lives in the lower suite of a house and the landlords live in the upper suite of the house.

The landlord testified that on April 1, 2019 a One Month Notice to End Tenancy for Cause with an effective date of April 30, 2019 (the "One Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on or about April 2, 2019.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.

The landlord testified that the tenant was late paying rent for the following months:

- July 2018;
- October 2018;
- November 2018;
- December 2018;
- January 2019;
- February 2019; and
- March 2019.

In support of the above the landlords entered into evidence rent receipts for the above months, all of which are dated after the first of the month.

The tenant did not dispute the fact that she was late paying rent for the above months. The tenant testified that she paid rent late because the relationship between herself and the landlords deteriorated.

Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenant on April 2, 2019, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it 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.

I find that the tenant was late paying rent on the following months:

- October 2018;
- November 2018;
- December 2018;
- January 2019;
- February 2019; and
- March 2019.

I therefore dismiss the tenant's application to cancel the One Month Notice 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:

- (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.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date

is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is May 31, 2019. I find that the corrected effective date of the One Month Notice is May 31, 2019.

I find that since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to an Order of Possession effective on the corrected effective date of the One Month Notice, pursuant to section 55 of the *Act*.

As the tenant was not successful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on May 31, 2019**, 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: April 29, 2019

Residential Tenancy Branch