



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT MT

Introduction

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- more time to make an application to cancel the Notice pursuant to section 66; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she was served with a notice of dispute resolution proceeding by the tenants.

The landlord testified that the tenants were served with her evidence via registered mail on April 16, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants were deemed served with this evidence on April 21, 2019, five days after the landlord mailed it, in accordance with sections 88 and 90 of the Act.

Issue to be Decided

Are the tenants entitled to:

- 1) The cancellation of the Notice?
- 2) More time to make this application?
- 3) Recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2017. Monthly rent is \$1,300.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$650.00. The landlord still retains this deposit.

The landlord testified that the tenants were served with the Notice, dated March 25, 2019, via its posting on the door of the rental unit.

The Notice indicates an effective move-out date of April 30, 2019.

The ground to end the tenancy cited in that Notice was that the tenant is repeated late paying rent. The Notice stated (and the landlord confirmed in her oral testimony) that the tenants were late in paying rent for the following months:

- March to June, 2018;
- August to October, 2018; and
- February and March 2019.

The landlord submitted emails and bank records which corroborated her claims that the tenants have been late in paying rent, as set out above. The landlord testified that the tenants have paid monthly rent on time for April and May 2019 (the months following the issuing of the Notice).

However, the landlord testified that she is tired of chasing the tenants for rent most months, and wants to end the tenancy.

Analysis

Section 47(1)(b) of the Act states, "a landlord may end a tenancy by giving a notice to end tenancy if the tenant is repeatedly late paying rent." This issue is examined in more detail by the Policy Guidelines.

Residential Tenancy Policy Guideline 38 states:

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

[...]

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[emphasis added]

Per section 26 of the Act, and Policy Guideline 38, the tenants are obligated to pay monthly rent on time. Section 47(1)(b) authorizes a landlord to end a tenancy if rent is repeatedly paid late. Upon reviewing the evidence and considering the landlord’s testimony, I find that the tenants were late in paying rent in nine of the last thirteen months.

Accordingly, I find that the Notice was validly issued on the basis that the tenants were repeatedly late in paying their rent, and I dismiss the tenants’ application to cancel the Notice.

Section 55 of the Act 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.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective May 31, 2019 at 4:00 pm.

Additionally, I order that the landlord serve the tenants with a copy of this decision, and the attached order of possession, within three day of receiving it.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an order of possession to the landlord effective May 31, 2019 at 4:00 pm. Should the tenants fail to comply with this order, it 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 *Residential Tenancy Act*.

Dated: May 14, 2019

Residential Tenancy Branch