



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated March 23, 2019 ("One Month Notice"), the grounds of which were repeated late payment of rent;
- for an order directing the Landlord to comply with the Act, regulation or tenancy agreement; and
- to recover the cost of her filing fee.

The Tenant and the Landlord appeared at the first teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. However, my connection to the teleconference started to malfunction early in the hearing, so it had to be adjourned.

Both Parties received phone information and a written notice of the date for the hearing to continue. The Landlord appeared at the reconvened hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The telephone line remained open while the phone system was monitored for eleven minutes, but the Tenant did not call in.

I reviewed all oral and written 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.

At the first hearing, neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the first hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which was the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I, therefore, advised the Parties that I would only consider the Tenant's request to set aside the One Month Notice and the recovery of the Application filing fee at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply.

Issue(s) to be Decided

- Is the One Month Notice valid or should it be cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 15, 2017, with a monthly rent of \$2,400.00, due on the fifteenth day of each month. The Parties agreed that the Tenant paid a security deposit of \$1,200.00, and no pet damage deposit.

The Parties agreed that the Landlord purchased the residential property from the Tenant on June 15, 2017, and thereafter, the Tenant rented the property from the Landlord.

In his written submission, the Landlord said the "Tenant made rent payments on time until August 2018, but since then the Tenant has been consistently late on rent payments every month." The Landlord said he makes mortgage payments every month from the rent he receives. He said: "The late rent payments are causing an undue financial burden and stress on me."

In the first hearing, the Tenant said:

When I am late, I try to pay it within a week. But I just got a new job and my pay was every 15th of the month. When I started I was on guaranteed pay, but I'm off

the guaranteed now. They made a mistake with paying me this time. I try to pay as soon as possible and text him about it, so I don't leave him not knowing what's happening. It is usually 3 – 5 or 6 days late, but once it was two weeks. I'm not trying to take advantage of the situation. He said as long as I pay his mortgage which is on the 22nd it would be okay. I'm used to the rent being on the first. I get paid at the end of the month, if you want to look at it this way, but I've never talked to him about this.

In the first hearing, the Landlord said:

Basically, the 15th was set to help her. We bought the house from [the Tenant], on the 15th. I just started the tenancy on the 15th. She's never brought it up to me that it was an issue to her. The situation with her work is more recent, but rent started being late as of last September [2018]. To me it's not that one issue – her recent employment. Second thing, when she asked me if it was okay to be late I said okay, but I didn't mean that it was okay to do that every time. They won't allow me to change my mortgage payment, and her late payment is habitual now. She used to let me know through a text message; now she doesn't say anything and I have to contact her about the rent.

In his written submission, the Landlord listed the times the Tenant has been late paying rent, as follows:

	Rent due on	Days late	Date Paid
1	September 15, 2018	25	October 10, 2018
2	October 15, 2018	5	October 20, 2018
3	November 15, 2018	5	November 20, 2018
4	December 15, 2018	6	December 21, 2018
5	January 15, 2019	3	January 18, 2019
6	February 15, 2019	14	March 1, 2019
7	March 15, 2019	5	March 20, 2019
8	April 15, 2019	3	April 18, 2019
9	May 15, 2019	10+	May 20, 2019+

In the second hearing, the Landlord said that the Tenant was five days late paying rent for June 2019, and that she is paid up until June 14, 2019, as the next rent is due on June 15, 2019. The Landlord also said he mailed the Tenant a letter saying he considered her payment “for use and occupancy only”, since the effective date of the One Month Notice had already passed.

In the first hearing, the Landlord testified that he served the Tenant with a One Month Notice dated March 23, 2019, in person on March 23, 2019. He said the effective vacancy date on the Notice was May 14, 2019, and that the ground for issuing the notice was the Tenant being repeatedly late paying rent.

Analysis

Section 26 of the Act sets out that a tenant must pay rent when it is due:

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.

Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(b) the tenant is repeatedly late paying rent;

RTB Policy Guideline 38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

The undisputed evidence before me is that the Tenant was repeatedly late paying rent for the last ten months. I find that the One Month Notice was consistent with section 52 of the Act in form and content. Based on the evidence before me, I find the One Month Notice is valid. I, therefore, dismiss the Tenant's Application to cancel the One Month Notice. Pursuant to section 55 of the Act, I award the Landlord an order of possession effective at 1 p.m. on June 14, 2019.

The Tenant was unsuccessful in her Application, and I therefore dismiss the Tenant's Application for recovery of the \$100.00 filing fee.

Conclusion

The Tenant was repeatedly late paying rent to the Landlord contrary to section 26 of the Act and the tenancy agreement. The Landlord served the Tenant with a valid One Month Notice, effective May 14, 2019.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on June 14, 2019 at 1 p.m. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 11, 2019

Residential Tenancy Branch