



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RC PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI, MNDCT, PSF, RP, OPC, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43;

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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) 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 claims regarding the One Month Notice and the Ten Day Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

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 Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy. At the outset of the hearing the landlord advised that they are only pursuing the One Month Notice as there isn't any unpaid rent as of this date, accordingly; the Ten Day Notice is cancelled and of no effect or force. This decision will only address the validity of the One Month Notice.

Issue(s) to be Decided

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on February 1, 2017 with the current monthly rent of \$820.00 due on the first of each month. The landlord testified that the tenant has been late in paying the rent on 11 occasions since August 2018. On June 10, 2019 the landlord issued a One month Notice to End Tenancy for Cause for the following reason:

- *the tenant is repeatedly late paying rent*

The landlord requests that the notice be confirmed and are granted an order of possession.

The tenant gave the following testimony. The tenant testified that she believes that she has been late in paying the rent five times since August 2018, not the eleven times as claimed by the landlord. The tenant testified that they only warned her once about late payment of rent. The tenant testified that the landlord is upset because she has stood up to them and exercised her rights. The tenant testified that she feels that landlord should not be entitled to an order of possession and that the tenancy should continue.

Analysis

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;...

The landlord needs only demonstrate that one of the reason identified in the 1 Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on at least three successive occasions from August 2018 to today's date; **in the tenants own testimony she confirmed and acknowledged that she has been late in paying the rent at least five times since August 2018.**

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

There is clear evidence that the written tenancy agreement and testimony from both parties requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions since August 2018. Although I recognize the tenant has undergone a trying set of circumstances recently, section 26(1) of the *Act* requires rent to paid when it is due. I do not accept the tenant's claim that the landlord allowed the late payments and it was not an issue.

For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent.

Section 55 of the *Act* reads in part 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.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. I grant an Order of Possession to the landlord. 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.

The landlord is also granted a monetary order of \$100.00. I grant the landlord an order under section 67 for the balance due of \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 15, 2019

Residential Tenancy Branch