



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, DRI, LRE, MNDCT, 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 June 22, 2019 ("One Month Notice");
- cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated July 4, 2019 ("10 Day Notice");
- dispute a rent increase;
- suspend or restrict the Landlord's right to enter;
- a monetary order for \$850.00 compensation under the Act; and
- recover the \$100.00 Application filing fee.

The Tenant and the Landlords appeared at the 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 Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. 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.

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 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 several matters of dispute on the Application, the most urgent of which are the applications to set aside the One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice, and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- 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 in mid-August, 2018, with a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$600.00 and no pet damage deposit.

The Parties agree that they did not enter into a written tenancy agreement, because the Tenant refused to sign the drafts that the Landlords prepared. The Tenant said that the written terms did not coincide with what the Parties had agreed to in writing. The Tenant acknowledged that he did not propose a draft tenancy agreement of his own.

The Landlords' grounds for serving the One Month Notice included that the Tenant was repeatedly late paying rent, and that he sublet the rental unit without the Landlords' written consent. The evidence before me focuses on the former ground, as have I.

The Parties agreed that they know each other, because the Landlords hired the Tenant to be the main contractor to renovate the Landlords' newly purchased residential property. The Landlords said that the tenancy began when the Tenant told them that he was having personal issues with where he was living, and that he needed a place to live. The Landlords said that the Tenant asked them if he could move into the upstairs

suite of the residential property, and they agreed to this request.

The Landlords provided a timeline dating from June 2018 to the present ("Timeline"), detailing events of this hearing. In the Timeline, the Landlords said that the Tenant moved into the rental unit in mid-August and paid half a month's rent, as well as the required security deposit. They said the first payment was \$1,200.00, which included half a month's rent and the \$600.00 security deposit. The Landlords said that they also expected the Tenant to pay for half of the heat, hydro and internet ("Utilities"), since he would be using half of the house.

The Landlords said they presented the Tenant with a draft tenancy agreement in September 2018, and that the Tenant requested a few small changes. The Landlords said they reformatted the tenancy agreement, left it with the Tenant to read over and sign, but that he still would not sign it.

The Landlords said that despite the lack of written tenancy agreement, the Parties had a verbal agreement that the Landlords would pay the Utilities, which were to be split 50/50 between the upstairs and downstairs tenants. The Landlords said that in October 2018, they reminded the Tenant about signing the tenancy agreement and about his share of the Utilities, which they said were "mounting".

The Tenant disputed the fairness of his having to pay half of the utilities, because he said there were additional utilities costs associated with the renovation of the residential property. I have not found it necessary to address the issue of utilities payments between the Parties and I make no findings in this regard. I find that the Parties initially agreed to a rent of \$1,200.00 for the rental unit.

In the hearing, the Tenant said in response to the Landlords' claim that he paid rent late: "I have receipts to say otherwise. I paid on the 30th of June – a day early. I've never received a single late notice. There should be receipts all dated for the first and the fifteenth. I pay in between the 1st and 15th all the time. I pay throughout the two weeks. I get money for jobs. I've never had an issue until recently."

The Landlords said that the rent was due on the first of each month, although in the hearing, the Tenant said that it was due on the 15th of the month, since he started his tenancy in mid-August 2018. However, the Landlords said in the hearing, "All of our tenants pay on the first; we have three tenants." Further, the Tenant also said in the hearing that he sometimes made payments before the first and after the first,

sometimes for \$1,200.00, but sometimes for smaller increments of \$300.00. He said “it depends on when the money is coming in.”

In the Timeline, the Landlords said that they provided the Tenant with a written warning about the late rent payments in April 2019. They said in May 2019, the Tenant asked for rent receipts for business purposes. The Landlords said that they provided the Tenant with receipts for rent paid dating back to September 2018; however, the Landlords also said: “These receipts and their dates *do not* indicate the correct date that the Tenant paid their rent, the submitted bank statements with highlighted e-transfers do.” [emphasis in original]

The Landlords’ bank statements show that they received an etransfer from the Tenant on the following dates:

Date Paid	Amount paid
March 7, 2019	\$278.00
March 8, 2019	\$150.00
March 12, 2019	\$195.00
March 12, 2019	\$150.00
April 13, 2019	\$900.00
April 15, 2019	\$350.00
April 30, 2019	\$1,250.00
May 30, 2019	\$1,200.00
July 14, 2019	\$1,200.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the Tenant’s testimony about not being late in paying rent to be internally inconsistent. He said that he sometimes paid the rent in increments, and that the date on which he made payments varied, depending on “...when money is coming in”. Also, he agreed with the Landlords’ evidence that he paid \$1,200.00 in August and that he paid the Landlords a \$600.00 security deposit. As a result, I find it more likely than not that the Landlords’ evidence that the Tenant paid half a month’s rent and his security deposit at the same time in August 2018 is accurate.

I find it consistent with common sense and the Landlords' stated tenancy practices that the Tenant's rent payment for September 2018 would be due on September 1st, and , therefore, on the first of the month for subsequent months. The Landlords' evidence is that the Tenant was on time paying rent in September and October 2018 – on the first of each month. I do not accept the Tenant's evidence that his rent was due on the 15th of the month.

The Landlords' evidence in the hearing and in the Timeline is that the Tenant was late paying rent every month from November 2018 through to and including April 2019. The Landlords said in the Timeline that the Tenant was on time paying rent in May and June 2019, but that he did not pay the amount agreed upon to compensate the Landlords for Utilities used in the rental unit in these months.

The Landlords said that their practice of imposing "late rent fees" was not enforced repeatedly, because of the Tenant's "plight of poor finances", and their ongoing work relationship with him.

According to Policy Guideline 38 ("PG #38"), the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. PG #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.

Based on the evidence before me overall, I find that the Tenant was repeatedly late paying rent to the Landlords for six months in the ten months of the tenancy prior to the One Month Notice being served on the Tenant. I find that this payment history supports the Landlords having justifiably served the One Month Notice on the Tenant on June 22, 2019. I confirm the One Month Notice.

As a result, the Tenant's Application to cancel the One Month Notice is dismissed, and I therefore decline to grant the Tenant the recovery of the \$100.00 filing fee. I also dismiss the Tenant's other claims without leave to reapply.

Further, I find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant was repeatedly late paying rent to the Landlords in 2018 and 2019. Based on the evidence before me, and pursuant to sections 47(1)(b) and 52 of the Act, I confirmed the One Month Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlords, effective on August 31, 2019 at 1:00 p.m. The Landlords are 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: August 28, 2019

Residential Tenancy Branch