



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL MAJESTIC ENT LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, OLC, FFT
OPC, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “*Act*”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), to restrict or suspend the Landlord’s right to enter, and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation*, and/or tenancy agreement. The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”). Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the hearing while no one called in for the Tenant during the approximately 15 minutes that the phone line was monitored. The Landlord was affirmed to be truthful in his testimony and confirmed that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of his evidence by registered mail. I accept the Landlord’s affirmed testimony that the documents were served by registered mail and therefore find that the Tenant was served in accordance with Section 89 of the *Act*. I also note that the Tenant was aware of the hearing date due to the Tenant’s own Application for Dispute Resolution which was scheduled to be heard at the same time.

The Landlord also confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. As the Tenant did not attend the hearing, the Tenant’s application is dismissed, without leave to reapply. This decision will address the Landlord’s application.

Preliminary Matters

During the hearing the Landlord stated that a 10 Day Notice had not been served to the Tenant, despite the Tenant's application to dispute a 10 Day Notice. The Landlord stated that only a One Month Notice has been served to the Tenant and the Landlord filed the application for an Order of Possession based on a One Month Notice.

Although the Landlord stated that a copy of the One Month Notice was submitted as evidence, it was not able to be located on either file during the hearing. Although it does seem that the Tenant may have submitted a copy, the copy is very small and thus not legible. As such, in accordance with rule 3.19 of the *Residential Tenancy Branch Rules of Procedure*, I requested that the Landlord submit a copy of the One Month Notice following the hearing which he did. As the Tenant would have already had a copy of the One Month Notice in dispute, I find that it does not unfairly prejudice the Tenant to accept this evidence following the hearing.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a One Month Notice?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy started on November 30, 2018. Rent in the amount of \$3,000.00 is due on the first day of each month. The Tenant paid a security deposit of \$1,500.00 at the start of the tenancy.

The Landlord testified that he served the Tenant with a One Month Notice on July 24, 2019 by registered mail and by posting the notice on the Tenant's door. The Landlord confirmed that the Tenant has not been served with a 10 Day Notice.

A copy of the One Month Notice was submitted following the hearing. The One Month Notice was dated August 24, 2019 and states the following as the reason for ending the tenancy:

- Tenant is repeatedly late paying rent

The effective end of tenancy date on the One Month Notice was stated as August 31, 2019.

The Landlord stated that the Tenant has not paid the full rent as due since the start of the tenancy and instead pays in smaller portions throughout the month. The Landlord made reference to September 2019 rent in which \$2,000.00 was paid on September 4, 2019 and the remaining \$1,000.00 on September 29, 2019.

The Landlord submitted e-transfer bank receipts into evidence showing partial payments from the Tenant on June 26, 2019, July 3, July 8, August 1 and August 3, 2019. The payments were of \$1,000.00 each, with the exception of the August 1, 2019 payment which was in the amount of \$2,000.00.

The Landlord also submitted into evidence copies of text message communication with the Tenant in which the parties discuss the payment of rent. In a text message dated March 6, 2019, the Tenants stated that they have \$1,000.00 on that day and will pay the rest on Friday.

In a text dated April 1, 2019, the Tenant states that rent will be paid the following day. On June 3, 2019, the Tenant sends a text message stating that he has some of the money for rent but the rest will be paid in two days. In a text message dated July 8, 2019, the Tenant confirms that rent was paid on that date.

Analysis

I accept the undisputed testimony of the Landlord that the Tenant was served with a One Month Notice on July 24, 2019 pursuant to Section 47(1)(b) of the *Act* regarding repeated late payment of rent.

Upon review of the Landlord's evidence, I find that it supports the testimony of the Landlord that rent has been repeatedly paid late by the Tenant. I find that the e-transfer information and the text messages establish that rent was not paid in full on the first of the month for March, April, May, June, July or August 2019. As stated in Section 26 of the *Act*, a tenant must pay rent when due as per the tenancy agreement. I accept the testimony of the Landlord that rent in the amount of \$3,000.00 is due on the first day of each month. As such, I find that partial payments mean that rent is paid late as it is not paid in full when due.

I also reference *Residential Tenancy Policy Guideline 38* which states that three late payments are the minimum number needed to justify ending a tenancy for repeated late payment. I accept the evidence before me that shows that the Tenant has paid the full rent late for at least the last six months and therefore find that the Landlord was justified in serving the Tenant with the One Month Notice for repeated late payment of rent.

I also note that the Tenant did not apply to dispute the One Month Notice, although I recognize that the Tenant may have applied to dispute a 10 Day Notice in error. However, as the Tenant's application has been dismissed and I find that the One Month Notice is valid, pursuant to Section 55 of the *Act* the Landlord is entitled to an Order of Possession on the One Month Notice.

Upon review of the One Month Notice, I find that the form and content comply with Section 52 of the *Act*, with the exception of the date of the notice. The Landlord testified that the One Month Notice was served on July 24, 2019 although the One Month Notice is dated August 24, 2019.

However, I find that this was likely an error given that the effective end of tenancy date was noted as August 31, 2019 which would indicate that the notice was served in July 2019. I also note that the Landlord filed the Application for Dispute Resolution on August 16, 2019, which would also indicate that the One Month Notice was served prior to this date. As such I find that the Tenant would have reasonably known that the date was an error due to receiving it prior to August 24, 2019 and I therefore I find it reasonable to amend the One Month Notice to be dated July 24, 2019. This amendment is made pursuant to Section 68 of the *Act*.

As I have found that the One Month Notice is valid and that the Tenant has resided in the rental unit beyond the effective end of tenancy date of the One Month Notice, I grant the Landlord a 2-day Order of Possession.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00. The Landlord may retain this amount from the security deposit, thus the security deposit held by the Landlord is now \$1,400.00.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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.

Pursuant to Section 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit as recovery of the filing fee paid for the application.

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: September 30, 2019

Residential Tenancy Branch