



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

As Tenant PM (the tenant) confirmed that they were handed the 1 Month Notice by the landlord on July 31, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed him a copy of the tenants dispute resolution hearing package on August 17, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants moved into this rental unit on or about May 1, 2014. On November 11, 2015, the parties signed a month-to-month tenancy agreement. Current monthly rent is set at \$791.00, payable in advance on the first of each month. The landlord continues to hold the \$375.00 security deposit paid on May 1, 2014. The tenant testified that Tenant KC moved out of the rental unit some time ago. The tenant said that their brother, Bob, moved into the rental unit with him about six or seven months ago. They said that they were not anticipating that their brother would end up staying in the rental unit as long as they had, but that there is very little rental accommodation available locally. The parties agreed that the landlord had accepted full rent payments for September and October, although this was accepted on the basis that the landlord was not reinstating the tenancy beyond the August 31, 2019 effective date noted on the 1 Month Notice.

The tenant entered into written evidence a copy of the 1 Month Notice to End Tenancy citing the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Although the landlord's written evidence also referenced concerns about noise emanating from the tenants' rental unit, as there was no mention of this on the 1 Month Notice, this issue does not form the basis of the landlord's reason for ending this tenancy for cause.

The landlord gave undisputed sworn testimony supported by written evidence that monthly payments of rent for this tenancy have been late on many occasions. The landlord noted that during this calendar year, the rent payments have been made on January 3, 2019, March 2, 2019, June 2, 2019, and July 2, 2019. They gave undisputed sworn testimony that there were also late rent payments in 2018, which reflected the tenant's lack of attention to the landlord's requirement as set out in their tenancy agreement that rent was due on the 1st of each month. The landlord confirmed that shortly after the landlord purchased this property that the tenant spoke to them to

advise that there might be occasional times when the sequence of their receipt of their paycheque would require them to pay their rent a little late. Rather than the occasional situation that the tenant described, the landlord maintained that this pattern of late payments was a frequent feature of this tenancy, one which the landlord had never agreed to accept.

The tenant confirmed having received written notices from the landlord with respect to the landlord's concerns about this tenancy.

The tenant said that once it became clear that the landlord was so concerned about this issue that the tenant had entered into an arrangement whereby they could pay rent through direct deposits to the landlord, which have been done on a timely basis since receiving the 1 Month Notice.

The landlord provided sworn testimony and written evidence that the tenant approached them a few years ago to seek permission to use the back room of the rental unit as a room where they could smoke in the tenant's woodworking shop. The landlord said that the permission they provided at that time was only to apply to winter months when it was cold outside. The landlord maintained that there is significant damage to the walls in that room due to the tenant's continued practice of smoking in that room, even in months when it was not cold outside. The landlord asserted that the rental unit has been badly damaged by the tenant's smoking inside the rental unit, at odds with the provision in their tenancy agreement that smoking was not allowed within the rental unit.

The tenant testified that they installed fans in the woodworking shop to diffuse the effect of their smoking in that room. The tenant said that there is a wood stove in the rental unit, which is more likely responsible for the smoke damage inside the rental unit. The tenant confirmed that there were a few times in non-winter months when they did smoke in the woodworking shop.

The tenant testified that they spoke with the landlord after the landlord enquired about the presence of Bob in the rental unit. At that time, the tenant said that the landlord was willing to remove the other tenant (KC) who had vacated the rental unit from the tenancy agreement and add Bob as the second tenant on that agreement. The landlord said that the tenants had contravened the tenancy agreement by allowing Bob to take up residency in the rental unit without the landlord's written permission.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Section 47(1) of the *Act* establishes that a tenancy can be ended for cause for the contravention of any of the provisions of that section of the *Act*, which include the three reasons identified in the landlord's 1 Month Notice. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, such as occurred in this instance, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 26(1) of the *Act* establishes that "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." There is no dispute that the tenancy agreement requires the tenant to pay all of the rent by the first of each month. The landlord has provided convincing evidence that the tenant was late in paying their rent on four occasions this year, prior to the issuance of the 1 Month Notice. The tenant did not dispute the landlord's assertion that this pattern of late payments of rent had occurred a number of times prior to January 2019.

In considering this matter, I note the wording of RTB Policy Guideline #38, which 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...

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...

After considering the sworn testimony of the parties and their written evidence, I am satisfied that there is a pattern of late payment of rent throughout the months leading up to the landlord's issuance of this 1 Month Notice. On this basis, I dismiss the tenants' application to cancel the landlord's 1 Month Notice.

Although a tenancy can be ended for any of the reasons identified on the landlord's 1 Month Notice, I should also note that I find that the landlord also had grounds to issue the 1 Month Notice for both of the other reasons cited in that Notice. The tenancy agreement established that smoking is not permitted within the rental unit. While the landlord gave limited permission to enable the tenant to smoke in one portion of the rental unit for winter months, the tenant confirmed that they smoked in that portion of the rental unit at other times and without the landlord's permission. Based on the landlord's evidence, I find that there is sufficient grounds to end this tenancy for a breach of a material term of this tenancy, which was not corrected within a reasonable period of being advised in writing to address the landlord's concerns. In addition, there is undisputed evidence from both parties that the tenant did not obtain the landlord's written authorization required to allow another person, the tenant's brother, to reside in this rental unit. As the tenant confirmed that their brother has been residing with them for the past six or seven months, this is also sufficient reason for the landlord to have issued the 1 Month Notice and to end this tenancy on that basis.

Section 55(1) of the *Act* reads as follows:

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.*

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [form and content of notice to end tenancy]. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on October 31, 2019, the last day for which the landlord has accepted payments from the tenant enabling the tenants to remain in occupation of the rental unit. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the tenants` application has been dismissed, the tenants are not allowed to recover their filing fee from the landlord.

Conclusion

I dismiss the tenants` application to cancel the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective October 31, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I also dismiss the tenants` application for the recovery of their filing fee.

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: October 10, 2019

Residential Tenancy Branch