



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, OPC, CNC, FFT

Introduction

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

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his 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. 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 claim regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the landlord's monetary claim for damages 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 Notice to End Tenancy.

The landlords monetary claim is 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 Notice to End Tenancy. I exercise my discretion to dismiss the landlords monetary claim with leave to reapply. In addition, I dismiss the landlords request to retain the security deposit with leave to reapply as the tenancy has not yet ended.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Is either party entitled to the recovery of the filing fee from the other for their application?

Background and Evidence

The landlords gave the following testimony. The tenancy began on September 1, 2013 with the monthly rent of \$1500.00 due on the first of each month. The tenants are also obligated to pay \$150.00 on the first of each month for their share of the utilities cost. The landlord currently holds \$750.00 that the tenants paid towards a security deposit. AJ testified that the tenants have been consistently late in paying their rent since they moved in.

AJ testified that despite numerous cautions, requests and warnings from her and her son towards the tenants, they have not corrected the issue and continue to pay the rent late. AJ testified that even after issuing a notice to end tenancy the tenants still paid their rent late. AJ testified that the October rent has been paid. SA testified that a One Month Notice to End Tenancy for Cause was issued on August 15, 2019 for the following reasons:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has not done required repairs to the unit/site.

SA testified that the landlord has submitted documentary evidence showing that the tenants have been late in paying the rent every month for the past 12 months, and that they request an order of possession.

The tenants gave the following testimony. The tenants testified that they agree that the rent is not paid on the first but that they had a verbal agreement that allows them to pay when they get their paycheque; which usually occurs in the first ten days of the month. The tenants testified that the landlord did not advise them that late payments were an issue.

Analysis

When a landlord issues a notice under section 47 of the Act they bear the responsibility to provide sufficient evidence to support the issuance of the notice. In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on twelve successive occasions during the past twelve months. The tenant did not dispute this fact, but submits that he thought it was an acceptable practice.

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...

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...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The undisputed evidence presented indicates that the tenant has been late in paying their rent on at least twelve consecutive occasions. Section 26(1) of the *Act* requires rent to be paid when it is due. I do not accept the tenant's claim that they could pay the rent whenever he got paid from his job.

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. As section 47 of the *Act* only requires that one of the reasons cited in a 1 Month Notice are valid, I have not considered the landlord's other reasons for seeking an end to this tenancy.

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 One 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*. As rent has been paid for the month of October for use and occupancy only, the Order of Possession will take effect at 1:00 p.m. on October 31, 2019.

The landlord is also entitled to the recovery of the filing fee. I find that the landlord is entitled to retain \$100.00 from the security deposit in full satisfaction of that claim.

The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

I dismiss the tenant's application to cancel the One Month Notice in its entirety without leave to reapply. 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.

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 18, 2019

Residential Tenancy Branch