



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated October 10, 2019 ("One Month Notice"), to dispute a rent increase, and to recover the cost of their filing fee.

The Tenants, M.K. and L.F., and the Landlord 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 Tenants and the Landlord were given the opportunity to provide their evidence orally and to 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.

At the outset of the hearing, I asked for the Landlord's name in this matter, as the Landlord's name on the Application was different than that in the One Month Notice. The Landlord advised me of her full name, therefore, I have amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the Application, the most urgent of which is the application to set aside a One Month Notice. I found that not all the claims on the Application are sufficiently related to this to be determined during this proceeding. I, therefore, only considered the Tenants' request to set aside the One Month Notice and to recover the \$100.00 Application filing fee at this proceeding. Therefore, the Tenants' other claim is dismissed, with leave to re-apply.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 15, 2017, with a monthly rent of \$1,600.00, due on the first of each month, which is now \$1,665.00. The Parties agreed that the Tenant paid the Landlord an \$800.00 security deposit and a \$200.00 pet damage deposit.

The Parties agreed that the Landlord served the Tenant with a One Month Notice dated October 10, 2019, with an effective vacancy date of November 15, 2019, automatically corrected to November 30, 2019, pursuant to section 53 of the Act. The Tenant said that the One Month Notice was not served in person, as it states on the form, but that it was posted on the rental unit door. The ground of the One Month Notice is that the "Tenant is repeatedly late paying rent."

The Landlord said in the hearing that the Tenants are almost always late paying rent, and that they never pay the whole amount. The Landlord said that the Tenant, M.K., just paid his rent for November and the amount remaining for October five minutes prior to the hearing starting on November 21, 2019.

The Tenant, M.K., acknowledged that he had just paid this rent to the Landlord prior to the hearing. He said he gets paid every week and that he sometimes makes rent payments early. In the hearing, the Tenant said they are not always late paying rent and have made payments early two or three times. He said:

If I'm going to be late, I say I have this amount and that next time I'll pay the

remainder. They always said it's okay. There are four different people who live upstairs. I'll tell one that I'll be late, and I don't know if they transfer the information to the others that one says it's okay. I admit we have been late on occasion. It's never been an issue or upset them or anything.

The Tenant acknowledged he, "...is sometimes short \$100.00 or \$200.00 or \$400.00." The Tenant said contrary to what it says on the One Month Notice, "...it was on the door, not hand delivered."

Analysis

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

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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 evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

A Landlord is authorized by section 88 of the Act to serve the One Month Notice by attaching a copy of it to the Respondent's door. I find that the error in this regard in the One Month Notice is not fatal. I find that the One Month Notice complies with section 52 of the Act as to form and content.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I, therefore, confirm the One Month Notice.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

Conclusion

The Tenants' Application to cancel the One Month Notice is unsuccessful, as the Landlord provided sufficient, undisputed evidence that the Tenant was repeatedly late paying rent. I decline to award the Tenant with recovery of the \$100.00 Application filing fee.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on November 30, 2019 at 1:00 p.m. **after service of this Order** on the Tenant. The Landlord is 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: November 28, 2019

Residential Tenancy Branch