



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 One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he was personally served with the tenants' application for dispute resolution but could not recall on what date. I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on August 1, 2016 and is currently ongoing. Monthly rent in the amount of \$1,214.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on December 2, 2019 a One Month Notice to End Tenancy for Cause with an effective date of January 31, 2010 (the "One Month Notice") was posted on the tenants' door. The landlord testified that the effective date on the One Month Notice should have read January 31, 2020, not 2010 and that this was a typo. The landlord entered into evidence a copy of the One Month Notice and a witnessed proof of service document.

The One Month Notice states the following reason for ending the tenancy:

- Tenant is repeatedly late paying rent.

The One Month Notice states that the tenants have been late with rent on four occasions since March of 2019. The landlord testified that the tenants were late paying rent for the following months: March, May, July, and December of 2019.

Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenants on December 5, 2019, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) of the *Act* is January 31, 2020. I find that the corrected effective date of the One Month Notice is January 31, 2020.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that 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 landlord's undisputed testimony I find that the tenant was late paying rent in March, May, July, and December of 2019. I therefore dismiss the tenants' application without leave to reapply.

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing. In addition to my above reasons and pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenants' application without leave to reapply for failure to attend.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenants' application and have found that the One Month Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on February 29, 2020**, which should be served on the tenants. Should the tenants 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: February 07, 2020

Residential Tenancy Branch