



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on December 8, 2019 seeking an order to cancel the One Month Notice to End Tenancy for cause (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on February 4, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and landlords attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, delivered by the tenant in person. The tenant stated this occurred on December 14, 2019, when the landlords came to the unit to inspect its condition. The landlords confirmed this detail.

On December 12, 2019 the tenant filed an Amendment to the Application for Dispute Resolution, to rectify the unit letter, omitted from the One Month Notice completed by the landlords. I find the tenant took this step as a precautionary measure, in light of the unit letter correctly entered on the tenant's application on December 8, 2019.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice?

If unsuccessful in this Application, are the landlords entitled to an Order of Possession of the rental unit?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords and tenant both agreed that there is a tenancy agreement in place, signed when presented to the tenant on February 1, 2017. The landlords provided this in the documentary evidence. The rent amount was set at \$1,050.00 at that time, payable on the first of each month. The security deposit agreed to was \$525.00. A separate page is titled 'Addendum' and is signed on the same date, providing: "There is to be no smoking in the unit at any time. Smoking is only permitted outside."

The parties confirm the tenancy agreement lists a different name than the tenant who has applied for dispute resolution. In the hearing, the tenant stated their surname was different at the time the tenancy agreement was signed.

The landlords provided documentary evidence that speaks to the history of the tenancy agreement, the initial living arrangement, and the modification in spring 2018 to have the tenant pay rent on the 1st and 15th of the month. This was to allow the tenant to manage their money situation better, in line with pay from work. The landlord also spoke to the history of rent payments. This includes the tenant asking to pay rent the day after it is due and making the happenstance arrangement to leave the money outside for the landlords to retrieve.

The One Month Notice is dated November 29, 2019, with the effective date for the tenant to move out being December 29, 2019. The landlords indicated the following reasons on page 2:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.

The landlords also provided a Proof of Service to show service upon the tenant took place on November 29, 2019. This was hand-delivered to the tenant. The tenant did not sign page 2 to

show confirmation via hand delivery; however, in the hearing, the tenant confirmed hand delivery by the landlords on the same date.

The landlord also provided a 'rent book' that "shows payments date; amounts; if rent was late; if the money was left outside or any changes that happen, which gives a clear picture of out [sic] history with [the tenant]." An entry in the rent book for October 25, 2019 shows: "Gave [the tenant] a late payment warning as he can't pay Oct. 26/18 rent until next week."

The landlords also provided two lists that show details of the rent book to the corresponding dates, throughout the entire duration of the tenancy. One of these lists links specific entries to screenshots of text messages to the tenant. A text image from the October 25, 2018 shows the message from the landlords: "You can't be late anymore with the rent, it's getting way too regular & we've let it slide too many times."

The landlords spoke to this documentary evidence more specifically in the hearing, describing the situation where the tenant would return to the unit late, responding to text message reminders and requests to pay from the landlords. This would often result in payments made the following day. Payments were always in cash, the landlords stated this was problematic in terms of late payments, with no post-dated cheques or e-transfer method in place. The landlords stated: "There were only a few months that [the tenant] paid on time", and "this pattern is evident throughout the record."

On the date of the hearing, the tenant was scheduled to pay rent for one-half the month of February, on February 7, 2020.

The tenant acknowledged receipt of the landlords' evidence and was referred to the same, providing a response when this was presented and addressed by the landlords. Speaking to this issue, the tenant stated: "from my perspective, this is thorough" and "this is basically it." Regarding text messages and the pattern established for the late cash payments the tenant stated: "this is accurate from my perspective."

The tenant also made two statements on the landlords' communication on this matter: "if I knew there was an issue – they agreed to Saturday" and "If I knew it was this big of an issue, I would have got the money by Friday." This is regarding the provision of payments when he returned from out-of-town work, most often on Fridays at the week's end.

Both parties provided oral testimony on the issue of safety in the unit, specifically whether the tenant left the stovetop gas burners on when not present. Both parties also spoke to the issue of smoking within the unit.

Analysis

Section 47(1)(b) of the *Act* provides that a landlord may end a tenancy by giving a One Month Notice to end the tenancy if the tenant is repeatedly late paying rent. Section 47(1)(d) allows the landlord to end a tenancy because the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right of interest of the landlord or another occupant or put the landlord's property at significant risk. These are the reasons checked by the landlords on the One Month Notice as applying in this situation.

Section 47(4) stipulates a tenant has 10 days to submit an Application for Dispute Resolution seeking to cancel the notice. Section 47(5) states that if the tenant does not dispute the notice within this time frame the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

In written submissions, the landlord has questioned the date that the tenant disputed the One Month Notice, stating it is "after the 10 days allowed", thereby triggering section 47(5) of the *Act* wherein the tenant is conclusively presumed to have accepted the end of the tenancy. On this issue I find the landlords are referring to the date December 11, 2019, as found on the Notice of Dispute Resolution. This is the date of processing within the Residential Tenancy Branch. The evidence shows the tenant completed the full application form on December 8, 2019 and filed the application with ServiceBC on December 9, 2019. I find these dates are within the statutory limits, within 10 days after the tenant received the One Month Notice on November 29, 2019.

The Residential Tenancy Policy Guideline 38 'Repeated Late Payment of Rent' gives a statement of the policy intent of the legislation. On section 47(1)(b), it provides: "Three late payments are the minimum number sufficient to justify a notice under these provisions."

In the matter before me, the landlords have the onus to prove that the reason for ending the tenancy is valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

- Multiple entries throughout the documentary evidence provided by the landlords show late payments of rent. From statements the tenant made in the hearing, I find the tenant acknowledged late payments.
- On October 25, 2018, the landlords requested ongoing payment of rent on time. Addressing this record, the tenant stated: "this is accurate from my perspective."
- There are more than three late payments of rent, with a high proportion of entries in the rent book showing 4 days or more payment of rent past that of the rent due. Cross-

referencing the log dates, I find this occurs bi-weekly, as per the verbal agreement the parties made starting May 1, 2018.

- The tenant denied knowing of any difficulty with payments being made on the day following the agreed-upon due dates – this contrasts with the tenant's acknowledgement that the records were accurate.
- The tenant denied knowing that payments carried out on the day following were problematic; however, there is no evidence on how he regarded the late notice reminder, nor any offer to adjust his payment habits when he knowingly maintained a schedule where he was out-of-town to work.

I find the repeated late payment of rent throughout the tenancy is sufficient cause for the landlords to issue the One Month Notice. I am not considering the merits of the landlords' reasons for serving a One Month Notice on the basis of smoking in the unit, nor that of the alleged risk of danger posed through the actions of the tenant.

I find the One Month Notice issued by the landlords on November 29, 2019 complies with the requirements for form and content set out in section 52 of the *Act*. This provision specifies the requirements in a notice: it must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy; and be in the approved form.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*. By this provision, I find the landlords are entitled to an Order of Possession.

The One Month Notice does not include the specific unit "B" indication. By the application of section 68 of the *Act*, I am satisfied that the tenant, upon receiving the One Month Notice, knew the address information that was omitted, and I find the document is so amended, in compliance with section 52 governing form and content.

As the tenant was unsuccessful in this application, I dismiss the request for recovery of the hearing filing fee.

Conclusion

Under section 55(1) and 55(3) of the *Act*, I grant an Order of Possession 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 14, 2020

Residential Tenancy Branch