



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On January 23, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

On February 5, 2020, the Tenant amended his Application seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*.

On February 18, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 24, 2020, the Landlord amended her Application seeking to increase the monetary compensation she was seeking pursuant to Section 67 of the *Act*.

On February 24, 2020, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant’s Application, on March 27, 2020 at 9:30 AM.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by hand on or around January 13, 2020 and the Landlord confirmed that she received this

package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he served the Landlord his Amendment by hand on or around February 5, 2020 but the Landlord advised that she never received this Amendment and only found out about it when she filed her own Application. The Tenant advised that he did not have a witness for service of this Amendment; however, as the Landlord advised that she understood the nature of his Amendment, she was able to proceed with the hearing.

The Landlord advised that she served the Tenant with the Notice of Hearing and Amendment package by registered mail on February 24, 2020 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and Amendment package.

The Tenant advised that he did not submit any evidence for consideration on this file.

The Landlord advised that she served her evidence package to the Tenant by hand on January 21, 2020 and the Tenant confirmed that he received this evidence. As the Landlord's evidence was served in accordance with the time frame requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notices cancelled?
- If the Tenant is unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2019, that the rent was owed in the amount of \$650.00 per month, and that it was due on the first day of each month. A security deposit was paid in the amount of \$325.00.

All parties agreed that the One Month Notice to End Tenancy for Cause was served to the Tenant on January 21, 2020 by hand. The reasons the Landlord served the Notice are because the "Tenant is repeatedly late paying rent" and the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The Notice also indicated that the effective end date of the tenancy was February 29, 2020.

The Landlord advised that the Tenant paid rent late on August, September, and December 2019 and she would have to remind the Tenant for the rent. She would get excuses from the Tenant about why he did not pay and one time, the Tenant arrogantly questioned her why she was worried about the rent as it was a small amount of money. She submitted documentary evidence to support this. The Tenant acknowledged that he had been late in paying the arrears for these months and he had no written authorization from the Landlord to pay rent late.

All parties agreed that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant on February 2, 2020 by hand. The Landlord advised that the Tenant did not pay February 2020 rent so she served him the Notice on February 2, 2020. The Notice indicated that \$650.00 was due on February 1, 2020. She also stated that the Tenant did not pay March 2020 rent either. The effective end date of the tenancy on this Notice was noted as February 12, 2020.

The Tenant advised that he paid rent to the Landlord by hand on February 1, 2020; however, he did not have a witness. He stated that he always paid rent in cash and he received receipts for this, up until the Landlord gave him the first Notice. He then stopped getting receipts. He then contradictorily stated that he paid half the rent on February 1 and then the other half on February 2, 2020. He submitted that he paid rent on March 1, 2020 in cash without a witness. He advised that he had bank statements showing that he withdrew money; however, he did not submit these as evidence as he

“did not want to waste his[sic] time.” As well, he stated that it “did not make sense to him[sic] to get evidence of proof of rent payment.”

The Landlord questioned why the Tenant would bother amending his Application to dispute the 10 Day Notice if he had paid the rent in full as alleged. Furthermore, she suffers from a health condition, and if the Tenant did pay the rent, it did not make sense to have her son take a day off from work to drive her to the Residential Tenancy Branch multiple times to file her Application.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord’s One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

In addition, I note the wording of Policy Guideline # 38 provides the following guidance regarding the circumstances whereby the 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...

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.”

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. As the Tenant acknowledged that he paid rent late for the months of August, September, and December 2019, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of this Notice.

Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect **two days** after service on the Tenant.

I will now turn my mind to the 10 Day Notice to End Tenancy for Unpaid Rent.

As stated above, Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

The consistent evidence before me is that the Tenant was served the Notice in person on February 2, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being served the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that “*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the*

effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”

As the Tenant received this Notice on February 2, 2020 by hand, the fifth day fell on February 7, 2020. The Tenant must have paid the rent in full or made his Application to dispute the Notice on this date at the latest. While the Tenant claimed to have paid the rent in full for February and March, the Tenant often provided unpersuasive and conflicting testimony about details of his payment history. Furthermore, he claims that the Landlord stopped giving him rent receipts in January 2020 despite him asking for them. However, if this were the case and he knew that the Landlord was not doing so, it does not make sense to me why he would continue to pay rent in cash and not make efforts to document these payments. In reviewing the Landlord’s evidence of her texts with the Tenant, it is evident that the Tenant’s attitude was ambivalent about paying rent when it was due and even verged on being belligerent when the Landlord would remind him that rent was due on the first of each month and would then request actual payment for rent. Moreover, while the Tenant claimed that he had evidence to demonstrate that he paid February and March rent, his reason for not submitting this evidence was because it was a waste of his time.

When reviewing the totality of the evidence before me, it is evident that the Tenant’s casual attitude about paying the rent on time jeopardized his tenancy, resulting in an Order of Possession. I find that the documented history of his responses to the Landlord’s requests for late rent demonstrate the Tenant’s indifferent mindset on his requirement to pay the rent when due. Combined with his unconvincing testimony and demeanour during the hearing, I find it more likely than not that the Tenant decided that he would no longer pay the rent after receiving the One Month Notice to End Tenancy for Cause. While he claimed to have evidence of withdrawals of these funds, he chose not to submit them as evidence. Furthermore, even if there were a record of withdrawals of funds, there is insufficient evidence of what he did with that money. As such, I am doubtful of the Tenant’s testimony and I find that I prefer the Landlord’s evidence on this point. As I am satisfied that the Tenant did not pay the rent in full and did not have a valid reason under the *Act* for withholding the rent, I find that the Landlord is entitled to a monetary award for February and March 2020 rent arrears. I grant the Landlord a monetary award in the amount of **\$1,300.00**.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant on

the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is also provided with a Monetary Order in the amount of **\$1,300.00** 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 28, 2020

Residential Tenancy Branch