



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OLC, CNE-MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause and End of Employment dated February 3, 2020 ("One Month Notice").

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference hearing was open for over 25 minutes, but no one called in on the Tenant's behalf. The Tenant was sent the Notice of Hearing package from the Residential Tenancy Branch ("RTB") on March 4, 2020.

Rule 7.1 pursuant to the RTB Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on April 30, 2020, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration.

During the hearing the Landlord was given the opportunity to provide his evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

At the start of the hearing, the Landlord told me he was recording the hearing pursuant to his lawyer's advice. I advised the Landlord that he was prohibited from recording the hearing and to stop recording immediately.

The Tenant's email address was in her Application. The Landlord provided his email address at the outset of the hearing and confirmed his understanding that the Decision would be emailed to both Parties, with any orders emailed to the appropriate Party.

Following the ten-minute waiting period, the Tenant's Application was **dismissed without leave to reapply** as the Tenant failed to attend the hearing to present the merits of her Application or to cancel her scheduled hearing in advance of the hearing. The Landlord did attend the hearing and was ready to proceed.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Issue(s) to be Decided

- Is the One Month Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord confirmed that the RTB had determined that a tenancy exists between the Parties, given that rent and utilities are paid by the Tenant to the Landlord in exchange for the use of the residential property. The Landlord said that the Tenant moved into the rental unit in mid-August 2017 and that she pays a monthly rent of \$550.00. The Landlord said the Tenant did not pay a security deposit nor a pet damage deposit.

The Landlord said he issued the One Month Notice, which was signed and dated February 3, 2020, was served by being posted on the rental unit door on February 3, 2020, and had an effective vacancy date of March 31, 2020. The grounds for the eviction that the Landlord checked off on the One Month Notice and confirmed in the

hearing were: (i) because the Tenant was repeatedly late paying rent over the course of the tenancy, and (ii) because the rental unit is provided by the employer to the employee to occupy during the term of employment, and the employment has ended.

In the hearing, the Landlord said that in addition to other instances earlier in the tenancy, the Tenant was late paying rent in November 2019, January 2020, February 2020, March 2020, and April 2020. The Landlord said that the Tenant still owes him \$100.00 from February 2020 rent and \$325.00 from March 2020 rent. He said the Tenant has not paid any rent for April 2020, and he fears she will not pay it in May 2020, either. The Landlord provided copies of text messages between the Parties, in which the Tenant confirms that she is late paying rent, as the Landlord has alleged.

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. Further, tenants are required to pay their rent, even in the state of emergency, which is still in place in British Columbia.

Section 47 of the Act allows the landlord to end a tenancy for 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.

...

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of

probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenant did not pay rent on time for five of the last six months. Further, the Landlord testified that the Tenant did not pay full rent in February and March 2020, nor did she pay any rent in April 2020.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid on time or in full, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$550.00 in rent owed for February, March and April 2020. Therefore, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply on this basis, as well.

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

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an Order of Possession. The effective date of the One Month Notice has passed, and the undisputed evidence before me is that the Tenant has not paid rent on time for five of the last six months. Accordingly, I find that the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice. I dismiss the Tenant's Application wholly, as the Tenant did not attend the hearing to provide evidence to support her Application. Further, I find that the One Month Notice is valid and effective as of March 31, 2020.

I grant the Landlord an Order of Possession **effective two days after it is served on**

the Tenant.

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: April 30, 2020

Residential Tenancy Branch