



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

In this dispute, the tenants sought an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”), pursuant to section 47 of the *Residential Tenancy Act* (the “Act”), an order restricting or suspending the landlord’s right to enter the rental unit, under section 70 of the Act and recovery of the filing fee under section 72 of the Act.

I note that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

The tenants applied for dispute resolution on February 25, 2020 (with a fee payment made on February 28, 2020) and a dispute resolution hearing was held, by way of telephone conference, on May 5, 2020. The landlord, the landlord’s representative (who provided testimony and submissions), and one of the tenant’s attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by either party.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties’ testimony may necessarily be reproduced.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply. Having reviewed the tenants’ application, I find that the claim other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue.

I explained to the parties that I would be dismissing the tenants' second claim, with leave to reapply. As such, this decision will only address claims 1 and 3, above.

Issues to be Decided

1. Are the tenants entitled to an order canceling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The landlord's representative (hereafter the "landlord") testified that the tenancy started on March 5, 2014 and that monthly rent, which is due on the first of the month, is \$900.00. A copy of the written tenancy agreement was submitted into evidence.

On February 22, 2020, the landlord's husband (that is, the representative's husband) served the Notice on the tenants in-person. A copy of the Notice was submitted into evidence, and on which several grounds for ending the tenancy were indicated. One reason indicated was that the tenant is repeatedly late paying rent. Regarding this ground, the landlord testified that the tenants were late paying rent on many months. As far back as August 2019, the tenants would "pay \$100 here, \$200 there," and that they have not paid on time since then. The tenants paid part of the rent on August 7, August 24, September 4, September 21, and so forth for every month since. Indeed, the landlord remarked that "it's very hard to keep track of rent" due to the sporadic and partial payments.

Another reason indicated was that of strata complaints. According to the landlord, there were "too many strata complaints" about smoking bong (marijuana) smoking, noise, and so forth. She referenced copies of the complaints in her submitted evidence. In addition, the landlord referred to some fights between the tenants (one of whom has since moved out) that resulted in the police being called and the landlord experiencing stress. The landlord also referred to issues regarding entry into the rental; these issues were not indicated on the Notice.

The tenant testified that since 2014 they have had a "pretty decent relationship" with the landlord. However, regarding the complaints from the strata, he noted that anyone can make a complaint, and that this does not necessarily prove the truth of the content of that complaint. He further noted that there have in fact been very few complaints since

2014 and that for the complaints that have complained that he has “dealt with every one of them.”

Regarding the claim that the tenants are repeatedly late paying rent, the tenant acknowledged that “yes, it’s sometimes late.” He spoke about trying to make arrangements with the landlord around Christmas time to “help him out” when he was having difficulty paying on time. Further, he explained that he simply “couldn’t pay all rent at once.”

Analysis

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.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The first ground on which the landlord issued the Notice was that the tenant was repeatedly late paying rent. Section 47(1)(b) of the Act states that

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;

According to *Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent* the following is important to consider in the application of this section:

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. 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. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In this case, the tenant was, according to the landlord, late paying rent in August, September, October, November, December 2019, and January 2020. The tenant did not dispute the landlord’s evidence regarding these repeated late payments of rent, and

acknowledged variously that “yes, it’s sometimes late” and that he “couldn’t pay all the rent at once.” This is a clear case of rent being paid late on a recurring, repeating basis.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving this ground for ending the tenancy, namely, that the tenants were repeatedly late paying rent. Therefore, I dismiss the tenants’ application for an order cancelling the Notice, without leave to reapply.

Having found that the landlord has proven this ground, I need not consider the remaining grounds on which the Notice was given.

Section 55(1) 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

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

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In this dispute, I have dismissed the tenants’ application, and, I have reviewed the Notice and find that it complies with section 52 of the Act. Therefore, I grant the landlord

an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision. Further, I find that the tenancy ended on March 31, 2020, as indicated in the Notice.

Conclusion

The tenants' application in respect of an order cancelling the Notice and for recovery of the filing fee is dismissed, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

It should be noted, however, that most orders of possession (with the exception of those issued under sections 56 and 56.1 of the Act) are not enforceable in the Supreme Court of British Columbia during the current provincial state of emergency, as per Ministerial Order No. M089, [*Residential Tenancy \(COVID-19\) Order*](#), MO 73/2020.

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: May 5, 2020

Residential Tenancy Branch