



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 of the Act, and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The hearing on May 04, 2020 was adjourned until today to extend the time for the landlord to prepare his evidence and for the tenant to respond to the landlord's evidence. At the adjourned hearing the landlord affirmed he received the application and the evidence (the materials) on April 06, 2020 in person. I find the landlord was properly served the tenant's application in accordance with section 89(1)(a) of the Act.

A notice to reconvene the hearing was sent by the Residential Tenancy Branch to both parties. Although I left the connection open until 11:26 A.M. to enable the tenant to call into this teleconference scheduled for 11:00 A.M., the tenant did not attend this hearing. The landlord and witness CW attended and were 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, his witness and I were the only ones who had called into this teleconference.

The landlord affirmed he served his evidence by registered mail sent on May 06, 2020 (the tracking number is on the cover page of this decision). I find the tenant was properly served the landlord's evidence in accordance with section 89(1)(c). I deem the tenant received the evidence on May 11, 2020, five days after the landlord sent it by registered mail, in accordance with section 90(a) of the Act.

I proceeded with the hearing in the absence of the tenant, as per Rule of Procedure 7.3.

Preliminary Issue – Tenant's application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

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.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) I order the application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

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 is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to an authorization to recover the filing fee for this application?
3. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

While I have turned my mind to all the evidence provided by the landlord, including documentary evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is his obligation to present the evidence to substantiate his claim.

The landlord affirmed the tenancy started on August 01, 2012. Rent is \$1,029.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$420.00 was collected and the landlord still holds it in trust. A copy of the tenancy agreement was submitted into evidence. The tenant continues to reside at the rental unit.

A copy of the Notice was provided. The reason to end the tenancy is: "Tenant is repeatedly late paying rent".

The Notice is dated February 14, 2020 and was sent to the tenant by registered mail on that date. The landlord affirmed the tenant confirmed receipt of the Notice. The effective date is March 31, 2020.

The landlord affirmed the tenant paid rent late often. On May 23, 2019 a warning letter was sent to the tenant informing him that late payment of rent is not going to be accepted by the landlord. The landlord affirmed after the tenant received the warning letter the tenant paid rent late on June 04 and August 02, 2019 and February 07, 2020.

The landlord submitted into evidence a text message received from the tenant. It states: "What a joke. I've been a tenant since 2012, I'm not going anywhere. If [landlord] got his mickey mouse office into the 21st century we could pay with direct deposit like normal people. He'll get his money, I don't care about the late fee."

Analysis

Based on the undisputed landlord's testimony, I deem the tenant was served the Notice on February 19, 2020, five days after the landlord sent it by registered mail, in accordance with sections 88 (c) and 90 (a) of the Act. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

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

(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;

Residential Tenancy Branch Policy Guideline 38 states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

[...]

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the landlord's undisputed testimony, the tenant's application and bank statements and the 10 day notice, I find the tenant paid rent late at least three times in the ten months after he received the warning letter on May 23, 2019. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(b) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

I find that pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective March 31, 2020, the effective date of the Notice.

I warn the tenant that he may be liable for any costs the landlords incur to enforce the order of possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the landlord effective on March 31, 2020. 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 *Residential Tenancy Act*.

Dated: July 06, 2020