



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

In this dispute, the tenants seek 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”).

The tenants filed an application for dispute resolution on July 15, 2020 and a dispute resolution hearing was held, by teleconference, on August 21, 2020. Two tenants and the landlord (along with the landlord’s wife, who is named as a landlord on the tenancy agreement but was not named in this application) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Finally, it should be noted 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.

Issues

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

Background and Evidence

The tenancy started on October 1, 2019 and monthly rent is \$2,000.00. Monthly rent is due, according to the written Residential Tenancy Agreement ("the Agreement," which was submitted into evidence) "by 3:00 PM on the 1st of every month." The Agreement also states that rent is due on the 1st day of each month. The tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$500.00.

On July 5, 2020, the landlord served the Notice on the tenants by leaving it with a person who resides with the tenants. There was a little of confusion between the parties regarding the date of service, with it being either July 5 or July 6, 2020. This confusion, however, is a rather moot point given that the tenants applied within the ten-day period in which they can dispute the Notice.

A copy of the Notice, along with additional evidence, was submitted into evidence. The landlord testified that the Notice was issued for several grounds, including the tenants allowing an unreasonable number of occupants in the rental unit, the tenants were repeatedly late paying rent, the tenants put the property at significant risk, and, the tenants assigned or sublet the rental unit without the landlord's written consent.

Regarding the repeated late rent, the landlord testified that "in ten months [of the tenants' occupying the rental unit] they have only paid on-time twice." While the rent is due on the first of the month, the landlord's Notice indicates that rent was late on November 2, 2019, rent was partially paid on December 1, 2019 and the remainder paid late on December 12, 2019, rent was partially paid late on January 1, 2020, the remainder paid on January 7, 2020, and it was paid late on February 7, 2020. Rent was paid on time on March 1, 2020. Rent was then repeatedly late from then on.

The landlords testified about rooms being rented out against strata rules, numerous complaints from the neighbours about fights, bear spray, numerous people coming and going, people working on mechanical stuff in the driveway, no lawn maintenance being done as it was supposed to be, and "the biggest problem is the police there."

The tenants testified that the party was for a ten-year old girl, though the landlord later said he meant other, earlier parties, that caused disturbances. They spoke about the son working on some mechanical things in the garage "because he was bored." And, that he was doing this "to make some extra money." (The landlord had stated that he thought that they were running some sort of business out of the property, contrary to strata rules.)

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. As explained during the hearing, however, a landlord only needs to prove a minimum of one ground on which a One Month Notice to End Tenancy for Cause was issued for me to grant an order of possession.

Regarding the ground based on the tenants' repeated late payment of rent, the landlord confirmed the grounds of the Notice, which included this ground. The Notice sets out repeated late payments of rent for November, December, January, and February. It is important to note that neither tenant denied, disputed, or otherwise spoke to this issue.

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: [...] the tenant is repeatedly late paying rent;

What does "repeatedly late paying rent" mean? Pursuant to *Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent*, "three late payments are the minimum number sufficient to justify a notice under these provisions." Further, 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.

In this dispute, the tenants paid rent late on four consecutive months, which is more than the minimum number of late payments that must occur before the Notice could have been issued.

Taking into consideration all the undisputed 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 the ground, under section 47(1)(b), on which the Notice was issued. Therefore, I dismiss the tenants' application

to cancel the Notice. Further, having reviewed the Notice, I find that it complies with section 52 of the Act. The landlord's Notice is upheld.

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.

Having found that the Notice complies with section 52 of the Act and having upheld the Notice, I grant the landlord an order of possession of the rental unit.

Given that the ground under section 47(1)(b) is upheld, I need not consider the remaining grounds on which the Notice was given.

Conclusion

The tenants' application is dismissed, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and which shall go into effect on September 1, 2020 at 1:00 PM. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 21, 2020

Residential Tenancy Branch