



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act* (the “Act”), to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued June 30, 2020, cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”) issued July 24, 2020, and for the return of their filing fee. The matter was set for a conference call.

Both the Landlords and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the One-Month Notice issued on June 30, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Two-Month Notice issued on July 24, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the Landlord served the One-Month Notice to end tenancy to the Tenant on June 30, 2020, by placing the notice in the Tenant's mail slot. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*
- *Tenant or a person permitted on the property by the tenant has:*
 - *Put the Landlord's property at significant risk*
- *Breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Notice states the Tenant must move out of the rental unit by July 30, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant filed to dispute the Notice on July 10, 2020.

The Landlord testified that the Tenant has been late in paying their rent six times this past year, October 2019, November 2019, December 2019, January 2020, February 2020 and March 2020. The Landlord testified that the Tenant pays their rent by depositing the funds directly to the Landlord's bank account. The Landlord submitted a copy of their bank statement into documentary evidence.

The Tenant testified that they paid their November 2019, December 2019, and January 2020 rent on January 13, 2020.

The Tenant argued that they have a verbal agreement with the Landlord allowing them to pay the rent late.

The Landlord testified that they never agreed to late payment of rent for this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the One-Month Notice on July 2, 2020, three days after it had been placed in their mail slot, pursuant to the deeming provision set out in section 90 of the *Act*. Accordingly, I find that the earliest this notice could end this tenancy to be September 30, 2020, one clear rental period after the One-Month Notice was deemed received.

Pursuant to section 47 of the *Act*, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Therefore, I find the Tenant had until July 12, 2020, to file their application to dispute this One-Month Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on July 10, 2020, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

The Residential Tenancy *Act* provides that a 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.

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.

In this case, I accept the sworn testimony of the Tenant that they had paid their rent late three times in the last 12 months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenant's application to cancel the One-Month Notice issued on June 30, 2020.

Section 55 (1) of the *Act* states the following:

Order of possession for the landlord

55 (1) *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.

I have reviewed the One-Month Notice, and I find that this Notice complies with section 52 of the *Act*.

As I have dismissed the Tenant's application to dispute the One-Month Notice, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended due to a fundamental breach of the tenancy agreement regarding the late payment of rent, there is no need to consider the remaining issues listed on the One-month Notice or Two-Month Notice to End Tenancy for the Landlord use of the Property, issued July 24, 2020.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not have been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the One-Month Notice, issued on June 30, 2018, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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: October 2, 2020

Residential Tenancy Branch