



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNC
 For the landlord: OPC

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47 of the Act.

The landlords' application pursuant to the Act is for an order of possession under the Notice, pursuant to sections 47 and 55 of the Act.

I left the teleconference connection open until 11:28 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord attended the hearing and was 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 and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Landlord's Documents/Application dismissed

I accept the landlord's testimony that the tenants were served the landlord's application and evidence in a single package delivered in person by a neighbour. The landlord does not remember when the package was served.

Section 89 (2) of the Act states:

- (2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:
(a)by leaving a copy with the tenant;

- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**
[emphasis added]

Based on the landlord's testimony, I find the tenants were not served in accordance with the Act, as the landlord served one package for both tenants. As noted above, each respondent must receive the application and supporting evidence.

As such, I dismiss the landlord's application.

Preliminary Issue – Service of the Tenants' Application/ Application dismissed

The landlord confirmed receipt of the tenants' application on September 28, 2020 by mail. I accept the tenants' application was served in accordance with section 89(1)(c) of the Act.

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 applicants (tenants) I order the tenants' application dismissed without leave to reapply.

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*.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[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.

Issue to be Decided

- Is the landlord entitled to an order of possession?

Background and Evidence

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

The landlord affirmed the tenancy started on November 01, 2018. Rent is \$1,500.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$750.00 was collected and the landlord still holds it in trust.

The landlord stated she served the Notice on August 30, 2020 at 7:47 P.M. in person to the tenants. A witnessed proof of service (RTB form 34) was submitted into evidence.

A copy of the Notice was provided. The Notice is dated August 30, 2020 and the effective date is September 30, 2020. The tenants continue to occupy the rental unit. The reasons to end the tenancy are:

The tenant is repeatedly late paying rent.

The tenant or a person permitted on the property by the tenant has:

Significantly interfered with or unreasonably disturbed another occupant or the landlord.

Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Put the landlord's property at significant risk.

The details of events are:

Tenant failed to pay rent on time on several occasions;

November 1, 2019. November's rent was not paid until Nov. 6, 2019 (Text messages between [anonymized]

January 1, 2020. Partial Rent payment received January 2, 2020. Remaining rent not paid until January 20, 2020.

February 1, 2020. Rent not paid until Feb, 8, 2020.

April 1, 2020. Partial rent payment received on April 2, 2020. Remaining rent not paid till April 8th., 2020.

The tenants' application was submitted on September 09, 2020.

The landlord affirmed the tenants paid rent late in November 2019, January, February, April, September and October 2020. November's rent has not been paid.

The landlord stated she did not serve a one month notice to end tenancy for cause in February 2020 because the tenants affirmed they would no longer be late and the landlord was compassionate.

Analysis

Based on the undisputed landlord's testimony, I find the tenants were served the Notice in person on August 30, 2020, in accordance with section 88 (1) of the Act. I find that the tenants' application was submitted by 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.

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.

(emphasis added)

Regulation C19 section 7(1) states:

7(1) As an exception to sections 44 (1) (a) (iii) and 47 (1) [landlord’s notice: cause] of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, a landlord must not give a tenant notice to end a tenancy under section 47 (1) of the Residential Tenancy Act in respect of a reason that relates to the affected rent being unpaid, including one or more of the following reasons:

(a) one or more payments of the affected rent are late;

Residential Tenancy Branch Policy Guideline 52 states:

“Affected rent” means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020

[...]

The “specified period” is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent: • April 1, 2020 • May 1, 2020 • June 1, 2020 • July 1, 2020 • August 1, 2020.

[...]

D. NOTICES TO END TENANCY FOR CAUSE The C19 Tenancy Regulation provides that **a landlord must not give a tenant a One Month Notice to End Tenancy for**

Cause under section 47 of the RTA or section 40 of the MHTPA in respect of a reason that relates to affected rent being unpaid, including one or more of the following reasons:

One or more payments of the affected rent are late. For example, if the tenancy agreement stipulates that rent is due on the first of each month, and the tenant paid their rent late for the months of April, May, June and July 2020, the landlord cannot end the tenancy for late payment of rent during those months.

(emphasis added)

Based on the landlord's undisputed testimony, I find the tenants paid rent late at least three times between November 2019 and August 2020 (the month the Notice was issued). Per Regulation C19 section 7(1), as the landlord could not consider late payments due between March 18 and August 17, 2020, I find the late payments for November 2019, January and February 2020 are not far apart and the landlord did not fail to act in a timely manner.

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(b) of the Act.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the 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 two days after service on the tenants.

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I grant an order of possession to the landlord effective two days after service of this order. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia. The order of possession should be served immediately.

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: November 18, 2020

Residential Tenancy Branch