



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 30, 2020 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, L.M. and G.M., and the Landlord, M.R., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenants, M.B., was also present and provided affirmed testimony.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Parties' names in this matter, as the Tenant identified on the Application was different than that in the tenancy agreement. The

tenancy agreement states that both L.M. and G.M. are tenants, and they both attended the hearing; therefore, pursuant to section 64(3)(c) and Rule 4.2, I amended the applicants' name(s) in the Application to reflect the tenancy agreement.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2019, with a monthly rent of \$1,300.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$650.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenants with a One Month Notice that was signed and dated September 30, 2020, it has the rental unit address, it was served in person on September 30, 2020, it has an effective vacancy date of October 31, 2020, and the grounds checked off for the One Month Notice are:

- Tenant is repeatedly late paying rent, and
- a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord said that she issued the Tenants a One Month Notice, for a few reasons. She said the first issue is the recurrently late payment of rent. The Landlord referred me to Appendix A of the tenancy agreement, which she submitted and served on the Tenants.

Paragraph 1 of Appendix A of the Landlord's evidentiary submissions states:

1. All rent owing shall be paid on time unless otherwise authorized in writing by the landlord. Late payment of rent will not be tolerated. Late rents will be charged an additional \$10.00 a day. If this additional \$10.00 a day late charge is not paid, this will be considered a breach of the conditions of tenancy, and the tenant(s)

will be given notice to vacate the premises.

The Landlord referred me to Appendix B of her submissions, which contains a list of when the Tenants paid their rent late and on what date it was ultimately paid. This list includes the following months, in which rent was paid late:

February 2019,
April 2019,
May 2019,
July 2019,
August 2019,
September 2019,
December 2019,
January 2020,
March 2020,
April 2020,
May 2020,
August 2020, and
September 2020.

The Landlord noted that this list of late payments is backed up with copies of receipts that were submitted into evidence, as well. Appendix B indicates that the Tenants paid their rent on time in the months of October through December 2020.

The Tenants said:

We've never got written notice of it being late; it was a verbal agreement, due to my husband's work, but the rent has always been paid. It's always been a verbal agreement. We pay \$1,000.00 or \$300.00 a week later. There's never been any written notice complaining of the rent being late.

The Landlord said:

There were two other issues – first they were told no animals or pets, but they had a dog. So, [L.M.] agreed to give the dog to a family member, but it was still at their place. We talked to them several times . . . that dog died, but they got another dog without permission. It's right in our tenancy agreement – see Appendix A, number five – no pets without the written request of the landlord. We verbally told them . . . finally we had to give them a letter about the dog. It's

always been at the very last second after they get this notice that they finally got rid of the dog.

One other breach had to do with an unlicensed vehicle on the premise. We told them numerous times, and they said they would move the vehicle. We wrote them two letters, one on September 2, 2020, and another on September 25, 2020, stating that the vehicle had to be moved on the 30th. The vehicle was still sitting there on the 30th, so I went with an eviction note. Before midnight on the 30th, they managed to move the vehicle.

We did not have verbal agreements that they could be as late as they were with rent. There were some times where it was paid practically at the end of the month. On page 7 of my evidence it shows that the July 2019 rent wasn't paid until July 28th.

The Tenants said:

As for the breach of the material term, I just bought a new vehicle, and I couldn't get the insurance right away. It was moved by the 30th. An advocate said I should apply to dispute [the One Month Notice].

We were late in September, but it was paid on September 3rd – paid in full. It's been paid by the 1st for the last six months.

She knew we had a dog here when we moved in. I had the first dog and they waited six months and said I had to get rid of her in May. And I couldn't get the vehicle moved until about 7 p.m. – it was moved by September 30th. We've never got written notice about our rent being late. It was on time for the past six months, other than in September, which was three days late.

As for July – it was fire season and my husband wasn't working; [the Landlord] knew this.

The Landlord referred me to page 17 of Appendix D of her evidence, which contains a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 11, 2019 ("10 Day Notice"). The 10 Day Notice indicates that it was issued, because the Tenants "failed to pay \$650.00 plus late fees that were due on the 1st of December 2019".

The Landlord said:

So there has been written notice to them about late rent. I included conditions of the tenancy with a copy of our tenancy agreement, and it clearly states rent is to be paid on time. Number five states that no animals are allowed. And clauses 12 and 13 are about unlicensed vehicles.

Page two of Appendix A contains clauses 12 and 13 of the Tenancy Conditions document, which pages were signed by both Parties, states the following:

12. All unlicensed vehicles must be removed from the property 30 days after the insurance expires.
13. No storage of derelict vehicles on the property is allowed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason she wishes to end the tenancy when a tenant applies to cancel a Notice to End Tenancy.

Section 26 of the Act sets out that a tenant must pay rent when it is due:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

Landlord's notice: cause

47 (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;

Policy Guideline #38 (“PG #38”) explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

The undisputed evidence before me is that the Tenants were repeatedly late paying the Landlord their rent owing in six months of 2020, including on three occasions in the last six months – July, August and September of 2020. I note that the Landlord served the Tenants with the One Month Notice on September 30, 2020, and that from that date forward, the Tenants were on time paying their rent.

The Tenants said they had a verbal agreement with the Landlord that it was acceptable to pay their rent late. However, the “parol evidence rule” is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract. I find that the Parties’ written tenancy agreement takes precedence over any prior or subsequent verbal agreement(s) about the timing of rent payments. I find that paragraph 1 of Appendix A of the Landlord’s evidence makes it clear that the Parties agreed to the importance of the rent being paid on time. As a result, I find that the Parties did not have a binding agreement that the rent could be paid other than by the first of each month.

The Tenants said that in July 2019, they were late with rent, because G.M. was not working that month. While I understand that everyone faces financial difficulties at times, the Tenants provided a reason for only one of the late rent payments, aside from saying that it has to do with when the G.M. was paid. I find that this is not an exceptional circumstance, in that the Tenants would know about this possibility and therefore, should have prepared to find another way of paying their rent on time.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. I, therefore, confirm the validity of the One Month Notice and dismiss the Tenants’ Application to cancel it without leave to reapply. I also dismiss the Tenants’ claim for recovery of the \$100.00 Application filing fee without leave to reapply.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. As the effective vacancy date for the One Month Notice has passed and pursuant to section 55 of the Act, I award the Landlord with an order of possession effective two days after service of the Order of Possession on the Tenants.

Conclusion

The Tenants' Application to cancel the One Month Notice is unsuccessful, as the Landlord provided sufficient evidence to establish the validity of the One Month Notice, pursuant to sections 47 and 55 of the Act. The Tenants repeatedly failed to pay their rent on time, contrary to the tenancy agreement and the Act. The Tenants' Application for recovery of the \$100.00 Application filing fee is also dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 05, 2021

Residential Tenancy Branch