



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

I left the teleconference connection open until 11:14 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Landlords SC (the landlord) and MC attended the hearing 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 landlords and I were the only ones who had called into this teleconference.

The landlord confirmed she received the Notice of Hearing from the tenant on December 15, 2020. The landlord affirmed she served her evidence to the tenant by registered mail on January 20, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on January 25, 2021, in accordance with section 90 (a) of the Act.

Preliminary Issue - Tenant's application dismissed

Rules 7.1, 7.2 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.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

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 I order the 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

Are the landlords entitled to an Order of Possession?

Background and Evidence

The landlord affirmed the tenancy started on August 01, 2018. Rent is \$1,742.50 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,700.00 was collected and the landlords hold it in trust. A copy of the tenancy agreement was submitted into evidence.

The landlord stated she served the Notice on November 11, 2020 in person to the tenant.

A copy of the Notice was provided. The Notice is dated November 11, 2020 and the effective date is December 12, 2020. The tenant continues 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.

The details of events are:

REPEATED LATE RENT (SIX TIMES SINCE MOVING IN)

* SIGNIFICANT DISTURBANCE TO LANDLORDS - INCLUDING SHOUTING OBSENIITIES TO HIS CHILDREN ON A DAILY BASIS WHILE THE LANDLORDS ARE WORKING FROM HOME IN THE SUITE ABOVE

* VERBAL ABUSING AND THREATENING LANDLORDS, JEAPORDIZING THE LANDLORDS' SENSE OF SAFETY IN THEIR OWN HOME

The tenant's application was submitted on November 23, 2020.

The landlord stated she sent an email to the tenant on November 27, 2019 warning that the landlords will no longer accept late payment of rent and the tenant may be served a one month notice to end tenancy for cause if the tenant pays rent late again.

The landlord stated the tenant paid rent late four times in 2020: January's rent on January 17, February's rent on February 19, March's rent on March 03, May's rent on May 22 and November's rent on November 30.

The landlord testified the tenant verbally abuses his children ages 3 and 4 every day from 10:00 A.M. to 10:00 P.M. In November 2020 the landlord reported the tenant to social services and the tenant threatened the landlord.

Analysis

A tenant may dispute a notice to end tenancy for cause pursuant to section 47(4) of the Act. The tenant was served the Notice in person on November 11, 2020 and filed this application on Monday, November 23, 2020.

The Rules of Procedure state under definitions:

Days

a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.

b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

This definition applies whether or not an act can be carried out using an online service.

As the tenth day to dispute the Notice was Saturday, November 21, 2020, and the tenant filed this application on Monday, November 23, 2020, the tenant disputed it within the time frame of 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 tenant paid rent late at least five times between November 27, 2019 and November 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, the late payments for January, February, March and November 2020 are not far apart and the landlord did not fail to act in a timely manner.

I therefore find the landlords are 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.

Pursuant to section 55(2)(b) of the Act, the landlords are entitled to an order of possession effective two days after service on the tenant.

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

For the purpose of educating the landlords, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Thus the value of the security deposit accepted by the landlords was unlawful.

Conclusion

I grant an order of possession to the landlords effective two days after service of 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: February 16, 2021

Residential Tenancy Branch