



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Kootenay Homes (2018)
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OLC, RR, RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated December 15, 2020 ("One Month Notice"); and to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2020; for an Order for the Landlord to Comply with the Act or tenancy agreement; for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; and for an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed.

An agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. 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.

Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application and the Agent confirmed this address in the hearing. The Agent also provided the Tenant's email

address in the hearing, and she confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Following the ten-minute waiting period, the application of the Tenant was **dismissed without leave to reapply** as the Tenant failed to attend the hearing to present the merits of his Application or at the very least cancel his scheduled hearing in advance of the hearing. The Landlord's Agent did attend the hearing and was ready to proceed.

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 Agent confirmed the evidence in the tenancy agreement, which indicates that the tenancy began on January 20, 2020, with a monthly rent of \$1,650.00 due on the first day of each month. The Agent said the Tenant paid a security deposit of \$825.00 and no pet damage deposit.

The Agent said that the Tenant had not paid any rent to the Landlord from March to September 2020. The Agent said she gave the Tenant a repayment plan for the rent arrears, and he assured her that he would pay this amount and his rent when both were due. However, she said that the Tenant did not pay his rent until the fifth day after she posted a 10 Day Notice on the door each month from September through December 2020. The Agent said that as of April 1, 2021, the Tenant will owe the Landlord \$8,906.00.

The Agent said she issued the One Month Notice, because the Tenant was repeatedly late paying rent from September to December 2020, and that he has continued this pattern into 2021.

The Tenant uploaded a copy of the One Month Notice and the Agent confirmed in the hearing that the One Month Notice was signed and dated December 15, 2020, it has the rental unit address and was served by registered mail on December 18, 2020. The One

Month Notice has an effective vacancy date of February 1, 2021, and it was served on the grounds that the Tenant is repeatedly late paying rent. The Agent confirmed that the Tenant has been late paying rent in September through December 2020, when she served him with the One Month Notice.

Analysis

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

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;

...

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

...

The Tenant applied for dispute resolution, but he did not attend the hearing to pursue his claim against the Landlord's evidence.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the One Month Notice on December 23, 2020, five days after it was sent to him by registered mail. Further, I find that the One Month Notice is consistent with section 52, as to form and content

As a result, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the Act. As the effective date of the One Month Notice has passed and the undisputed evidence before me is that the Tenant did not pay rent on time for four

months prior to being served with the One Month Notice, I find that the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

The Landlord's claim for an order of possession is successful, as the Tenant was repeatedly late paying rent in the four months leading up to the One Month Notice being issued. Therefore, for this reason, and because he did not attend the hearing, his Application is dismissed without leave to reapply.

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

Should the Tenant fail to comply with this Order, it 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: March 30, 2021

Residential Tenancy Branch