



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On January 1, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 19-minute teleconference. All in attendance provided a solemn affirmation.

The Landlord advised that the Tenant only served her with the Notice of Hearing package by hand on January 25, 2021 and it is her position that this package was not served to the Landlord within 3 days of being made available to the Tenant, pursuant to Rule 3.1 of the Rules of Procedure. Records indicate that this package was made available by the Residential Tenancy Branch to the Tenant on January 6, 2021. As the undisputed evidence is that this package was not served to the Landlord in accordance with Rule 3.1, I dismiss this Application in its entirety. However, as this Application pertains to the Notice, I must still consider its validity.

The Landlord advised that she served her evidence package to the Tenant by posting it on his door on February 8, 2021. As the Landlord’s evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on October 1, 2018, that the rent was established in the amount of \$922.50 per month, and that it was due on the first day of each month. A security deposit was paid in the amount of \$450.00. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant on January 1, 2021 by posting it to his door. The reasons the Landlord served the Notice are because the "Tenant is repeatedly late paying rent" and the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The Notice also indicated that the effective end date of the tenancy was February 28, 2021.

The Landlord advised that the Tenant has consistently paid rent late a total of 18 times since the tenancy started. In 2020 alone, she submitted that the Tenant has paid rent late in January, April, May, June, July, August, September, October, November, and December. She cited her documentary evidence of the history of late rent payments for these months to corroborate these late payments. As well, she indicated that the Tenant had also paid rent late in 2019 and 2018. She referenced her documentary evidence which supports her communication to the Tenant every time rent was owed and was paid late. To illustrate the Tenant's stance on his belief about when rent should be paid, she referred to a message that he sent her where he stated that "I did not submit my hours in time so I get my check tomorrow And[sic] I never pay early... I'm not good for the money If[sic] I say the day... It[sic] happens If[sic] I'm sick... and cant[sic] submit my hours in time... that's not my problem." She confirmed that rent for March 2021 has been paid.

A 10 Day Notice to End Tenancy for Unpaid Rent dated October 7, 2020 was also submitted as documentary evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

In addition, I note the wording of Policy Guideline # 38 provides the following guidance regarding the circumstances whereby the 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.

Section 26(1) of the *Act* establishes that "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."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. Based on the consistent and undisputed evidence that the Tenant has paid rent late for the months of October, November, and

December 2020, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of this Notice.

Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on March 31, 2021** after service on the Tenant.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on March 31, 2021 after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises 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: March 26, 2021

Residential Tenancy Branch