



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNR, LRE, OLC, FFT, CNC**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlords' right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlords to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenants filed an amendment to the above application on January 14, 2020 for

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

Tenant B.H., the tenant's advocate and the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified that they were not served with the tenants' application for dispute resolution or amendment. The tenant's advocate testified that she thought she e-mailed the tenants' application for dispute resolution to landlord A.B. Landlord A.B. testified that she did not receive the tenants' application for dispute resolution. No proof of service documents or email service documents were entered into evidence. Landlord A.B. testified that the landlords only learned of this hearing when she called the Residential

Tenancy Branch to see if the tenant disputed the One Month Notice to End Tenancy for Cause. A note on file corroborates this testimony.

I find that the tenants have not proved that the landlords were served with the tenants' application for dispute resolution or amendment in accordance with section 88 and 89 of the *Act*. The tenants' application is therefore dismissed with leave to reapply, except the tenant's application to recover the filing fee is dismissed without leave to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Procedural Issues

Both parties agree that a 10 Day Notice to End Tenancy for Unpaid Rent was not served on the tenants by the landlords and that the tenants filed to cancel the 10 Day Notice in error. I therefore will not consider if the landlords are entitled to an Order of Possession pursuant to the sections 46 and 55 of the *Act*. I will consider if the landlords are entitled to an Order of Possession pursuant to the One Month Notice to End Tenancy for Cause, in accordance with sections 47 and 55 of the *Act*.

The Parties provided or confirmed their email addresses during the hearing, and they also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties agree that they exchanged evidence on March 25, 2021 and that while both parties evidence was served late, neither party objected to the other's evidence being considered.

Issues to be Decided

1. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and is currently ongoing. A written tenancy agreement was signed by the landlords H.B. and A.B. on March 5, 2019 and the tenants on April 2, 2019, a copy was submitted for this application.

The tenancy agreement states that monthly rent in the amount of \$2,200.00 is payable on the first day of each month. Tenant B.H. testified that he and tenant C.F. verbally asked landlord D.B. if rent could be due by the 5th of every month to match up with tenant C.F.'s pay schedule and that landlord D.B. agreed. The tenants entered into evidence a letter signed by tenant C.F. which states same. Landlord D.B. testified that the tenants asked if they were permitted to pay rent on the 5th of every month and that the landlords refused to permit late rent.

Both parties agreed that the tenants paid the landlords a security deposit of \$1,1000.00.

The landlords testified that a person who answered the door of the subject rental property was personally served with a One Month Notice to End Tenancy for Cause on December 30, 2020. A witnessed proof of service document stating same was entered into evidence. The tenant testified that he received the One Month Notice to End Tenancy for Cause around then but did not know on what date. The advocate testified that she has no reason to believe that the One Month Notice to End Tenancy for Cause was not received by the tenant on the date of delivery.

The One Month Notice to End Tenancy for Cause has an effective date of January 31, 2021 and states the following reason for ending this tenancy:

- Tenant is repeatedly late paying rent.

Both parties agree on the following dates the tenants paid rent to the landlords:

Month Rent Due	Date Rent Paid	Amount Paid
February 2020	February 3, 2020	\$2,200.00
March 2020	March 2, 2020	\$2,200.00
September 2020	September 8, 2020	\$2,200.00
October 2020	October 5, 2020	\$2,100.00
	October 13, 2020	\$100.00
November 2020	November 6, 2020	\$2,200.00
December 2020	December 16, 2020	\$2,200.00

Tenant B.H. entered into evidence an e-transfer statement confirming the above. The tenant testified that he paid rent late in October and December because he was in the hospital and has a disability. The whereabouts of tenant C.F. were not provided.

Analysis

Based on the testimony of both parties, I find that, on a balance of probabilities, service of the One Month Notice to End Tenancy for Cause was effected on the tenant on December 30, 2020, in accordance with section 88 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that 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.

The tenancy agreement signed by both tenants clearly states that rent is due on the first day of each month. I find that the tenants have not proved that the landlords agreed to accept rent by the 5th of each month. I find that rent was due on the first day of every month.

Based on the testimony of both parties and tenant B.H.'s e-transfer record, I find that the tenants were late paying rent on six occasions from February 2020- December 2020, which calculation excludes late rent payments made between March 18, 2020 and August 17, 2020. I note that even if rent was due on the fifth day of each month, the tenants would still have been late paying rent on four occasions between September 2020 and December 2020.

While I accept the tenant B.H.'s testimony that he has a disability and has suffered health issues, this does not negate the tenants' responsibility to pay rent on time and in accordance with the tenancy agreement and section 26 of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Pursuant to section 47(1)(b) of the *Act*, I find that the One Month Notice to End Tenancy for Cause is valid. I find that the One Month Notice to End Tenancy for Cause complies with the form and content requirements of section 52 of the *Act*.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act*, the tenants' application to cancel the One Month Notice to End Tenancy for Cause was dismissed, and the One Month Notice to End Tenancy for Cause was upheld, the landlords are entitled to a two-day Order of Possession.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenants**. 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.

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: April 01, 2021

Residential Tenancy Branch