



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was conducted based on the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated January 1, 2021 (1 Month Notice). The filing fee was waived for this application.

The tenant, WM (tenant), the landlord, and a witness for the landlord, ZK (witness) attended the teleconference hearing. The witness was not called by the landlord to testify during the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord confirmed that they received the tenants' application and documentary evidence and that they had the opportunity to review the tenants' evidence prior to the hearing. The tenant testified that they did not get served with the landlord's documentary evidence until three days before the hearing. The landlord confirmed during the hearing that although they were aware of the hearing in January 2021, the landlord did not serve the RTB with their evidence until four days prior to the hearing. The RTB Rule 3.15 requires that a respondent serve their evidence on the RTB and the other party as soon as possible and not less than 7 days before the hearing. As the landlord's documentary evidence was served late and not in accordance with the Rules of Procedure, the landlord's documentary evidence was excluded from the hearing. I find the landlord was sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

Although a copy of the written tenancy agreements were not submitted for my consideration, the parties agreed that the first fixed-term tenancy agreement began on February 1, 2018, and that the second fixed-term tenancy agreement began on February 1, 2019 and after January 31, 2020, the tenancy reverted to a month to month tenancy. There is no dispute that rent is due on the first day of each month.

The tenant confirmed that they received the 1 Month Notice on January 1, 2021 based on their application details. The 1 Month Notice alleges 8 causes, including the repeated late payment of rent and 7 other causes. The tenant stated that they do not agree that the landlord has cause to end the tenancy.

During the hearing, the parties confirmed the following:

1. December 2019 rent due December 1, 2019 was paid in two installments, the first portion on December 1, 2019 and the remainder on December 18, 2019. The tenant agreed with this information.
2. February 2020 rent due February 1, 2020 was paid on February 9, 2020. The tenant claims the rent was paid on February 2, 2020 and not February 9, 2020.

3. October 2020 rent was paid on October 2, 2020, which was confirmed by both parties.
4. April 2021 rent, which was after the 1 Month Notice was issued, was not paid on April 1, 2021. Both parties confirmed this information. The landlord stated rent has not been paid for April 2021, and the tenant claims that although the April 2021 rent cheque “bounced” they have since attempted to pay rent and the landlord did not accept the rent. The landlord did not respond to this allegation during the hearing.

Analysis

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

RTB Policy Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of facts before me I find that the tenants paid their rent late on at least three occasions before the 1 Month Notice was issued and at least one occasion since being served with the 1 Month Notice.

Therefore, I find it is not necessary to consider further testimony regarding additional late payments of rent. In addition, I do not find it necessary to consider the other 7 causes listed on the 1 Month Notice as the landlord succeeded in proving the first cause. Therefore, **I dismiss** the tenants’ application to cancel the 1 Month Notice and I uphold the landlord’s 1 Month Notice dated January 1, 2021 with an effective vacancy date of February 1, 2021. Section 55 of the Act applies and states:

Order of possession for the landlord

55 (1) 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.*

[emphasis added]

I have reviewed the 1 Month Notice and have determined that it complies with section 52 of the Act. Therefore, **I grant** the landlord an order of possession pursuant to section 55 of the Act **effective two (2) days after service on the tenant** as the effective vacancy date of the 1 Month Notice has already passed.

The tenancy ended on February 1, 2021, which was the effective vacancy date listed on the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld and is valid.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. Should the tenants fail to vacate the rental unit, the tenants are cautioned that they may be liable for all enforcement costs including bailiff fees.

The decision will be emailed to the parties. The order of possession will be emailed to the landlord only for service on the tenants.

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: April 9, 2021

Residential Tenancy Branch