



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on January 8, 2021, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and Both Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice issued on January 9, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord right to enter the rental unit be suspended or have conditions?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties disagreed on the start date for this tenancy; the Tenant testified that the tenancy started on October 1, 2017, the Landlord testified that this tenancy started sometime in the summer of 2017. The parties agreed that rent in the amount of \$1,500.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$700.00 and at the outset of this tenancy.

The Landlord testified that they served the Notice to end tenancy to the Tenants on January 8, 2021, by personal service. The Tenants submitted a copy of the Notice into documentary evidence. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenants must move out of the rental unit by March 1, 2021. The Notice informed the Tenants of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within ten days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenants have been late in paying their rent four times in the last year, October 2021, December 2020, January 2021, and April 2021.

The Tenant testified that they agreed they had paid the rent late for October 2021, December 2020, January 2021, and April 2021 for this tenancy

The Landlord requested an Order of Possession to enforce their notice to end this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

The Residential Tenancy *Act* provides that a 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.

In this case, I accept the agreed-upon testimony of these parties that the Tenants have paid their rent late four times in the last twelve months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenants' application to cancel the Notice issued on January 8, 2021.

Section 55(1) of the *Act* 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.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an Order of Possession effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenants.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Since the tenancy has ended due to a fundamental breach of the tenancy agreement regarding the late payment of rent, there is no need to consider the remaining issue for an order to suspend or set conditions on the landlord's right to enter the rental unit or site.

Conclusion

The Tenants' Application to cancel the One-Month Notice, issued on January 8, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants must be served with this Order. 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 13, 2021

Residential Tenancy Branch