



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC, CNL, MNDCT, OT, OLC, FFT

Introduction

On February 10, 2021, the Tenants 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”), seeking to cancel a 10 Day Notice for Unpaid Rent pursuant to Section 46 of the *Act*, seeking more time to cancel the 10 Day Notice for Unpaid Rent pursuant to Section 66 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 1, 2021, the Tenants amended their Application seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to Section 49 of the *Act* and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

Both Tenants and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, the parties were advised that if they had an issue with what had been said, to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package by hand on March 3, 2021. Included in this package were the Tenants’ Amendment and their evidence. The Landlord confirmed that he received this package that day and he did not have any position with respect to how this late service of the Notice of Hearing package would have been prejudicial to him. Despite this Notice of Hearing package being served late and contrary to Rule 3.1 of the Rules of Procedure, as the Landlord could not explain how this was prejudicial, I am satisfied that he had sufficient time to respond to this

Application. As such, I am satisfied that the Landlord was duly served the Notice of Hearing package, the Amendment, and the evidence. Consequently, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenants on May 5, 2021 by posting it to the Tenants' door. The Tenants confirmed that they received this package last Wednesday. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the notices to end tenancy, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in 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

- Are the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are 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.

All parties agreed that the tenancy started on October 1, 2020, that the rent was established in the amount of \$1,200.00 per month, and that it was due on the first day of

each month. A security deposit was paid in the amount of \$600.00. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenants on February 2, 2021 by being posted to the Tenants' door. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The Notice also indicated that the effective end date of the tenancy was March 31, 2021.

The Landlord advised that the Tenants paid rent late in November 2020, January 2021, and February 2021. The Tenants confirmed that they paid rent late in November 2020, but it was their belief that the 10 Day Notice for Unpaid Rent served to them for November 2020 rent was cancelled in a previous Dispute Resolution proceeding.

They also acknowledged that they paid January 2021 rent late because they had difficulties accessing their funds from the bank.

Finally, they confirmed that they paid February 2021 rent late, but they stated that it was because they were advised that they were permitted to by an Arbitrator from a previous Dispute Resolution proceeding (the relevant file number is noted on the first page of this Decision). They acknowledged that there was no such instruction documented in that Decision, however.

The Landlord advised that the Arbitrator in the previous Decision did not give any instruction to the Tenants to allow them to pay February 2021 rent late.

All parties also agreed that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenants on February 2, 2021 and a Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenants on February 24, 2021.

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 the 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;

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 Tenants are 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 Tenants to pay all of the rent by the first of each month. While the Tenants acknowledge that they did not pay rent on time for November 2020 or January 2021 and that they did not have a valid reason under the *Act* for not doing so, they allege that they were permitted by a previous Arbitrator not to pay rent on time for February 2021.

However, the previous Decision does not contain any authorization instructing the Tenants that they were permitted not to pay February 2021 rent on time. Furthermore, it does not make sense to me why the Arbitrator would change the terms of the tenancy agreement and state that the Tenants could pay rent on another day for February 2021, contrary to the tenancy agreement. As such, I am doubtful that the Tenants were permitted to pay February 2021 rent on a day other than February 1, 2021.

Based on the consistent and undisputed evidence before me, I am satisfied that the Tenants have paid rent late for the months of November 2020, and January and February 2021. As such, I find 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 **two days** after service on the Tenants.

As an Order of Possession was granted on the One Month Notice to End Tenancy for Cause, it was not necessary to hear any matters with respect to the 10 Day Notice to

End Tenancy for Unpaid Rent or the Two Month Notice to End Tenancy for Landlord's Use of Property.

As the Tenants were not successful in this claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenants. Should the Tenants 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: May 14, 2021

Residential Tenancy Branch