



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenant, his translator and the landlord's agent (agent) attended and the hearing process was explained.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

At the beginning of the hearing, the only participant in attendance was the landlord's agent, who said that she was familiar with the landlord's issues and evidence.

The agent confirmed that the landlord does not live at the residential property, even though her service address was listed as the residential property. The agent said the landlord was elderly and required her assistance.

Five minutes later, the tenant and a friend called into the hearing. The tenant's friend, BS, immediately said the tenant could not speak English and he wanted a translator. I informed BS that there was no translator for the hearing and that the tenant is responsible for preparing for the hearing. BS was told that if the tenant required a translator, the tenant should arrange for that prior to the hearing.

BS then said he would provide translation for the tenant and he stayed in the hearing for that purpose.

Additionally, the parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the 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, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Additionally, after the hearing was well underway, the landlord appeared in the tenant's rental unit and there appeared to be a tense exchange. I asked the agent to ask the landlord to leave the rental unit, and the landlord eventually complied. It appeared that the landlord remained at the residential property for the balance of the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice to end the tenancy?

Background and Evidence

A tenancy agreement filed in evidence shows a tenancy start date of June 14, 2018, monthly rent of \$400 due on the first day of the month and a security deposit of \$200 being paid by the tenant to the landlord.

The agent testified in support of the Notice, issued pursuant to section 47(1)(b) of the Act. The Notice filed in evidence shows a date of March 4, 2021, listing an effective end of tenancy date of April 8, 2021. The agent said that the Notice was served to the

tenant by personal service and the tenant confirmed in his application he received the Notice on March 7, 2021.

The causes listed on the Notice alleged the tenant is repeatedly late paying rent and that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The agent testified that the tenant has not paid the monthly rent for December 2020, January, February, March, April or May 2021.

The landlord submitted on the Notice that the tenant did not pay his rent payments in December, 2020 or January, February or March 2021, which caused the Notice to be issued to the tenant.

Tenant's relevant response-

The tenant said he stopped paying rent in December 2020, because the landlord has kept coming into his rental unit anytime they wanted, without invitation or notice. Later on, according to the tenant through his translator, a person unknown to the tenant came around for the rent, but the tenant would not pay the rent to a stranger.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

A One Month notice to End the Tenancy for Cause is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date here of April 8, 2021, is changed to April 30, 2021.

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act.

Section 47(1)(b) of the Act authorizes a landlord to end a tenancy if the tenant is repeatedly late in paying rent.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason indicated on the Notice.

Under section 26 of the Act, 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.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

After considering the undisputed evidence submitted for this hearing, where the tenant agreed he had not paid the monthly rent since before December 2020, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

While the tenant claims he stopped paying the monthly rent due to the landlord coming into his rental unit, I do not find that excused the tenant from his legal obligation to pay monthly rent in full by the first day of the month.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant is repeatedly late paying rent.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

As the effective date of the Notice has already passed, I find the landlord is entitled to and I grant an order of possession effective two days after service upon the tenant pursuant to section 55 of the Act.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement such as **bailiff fees** are recoverable from the tenant.

I dismiss the tenant's request for recovery of the filing fee.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

The tenant's request for recovery of the filing fee is dismissed, without leave to reapply.

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 20, 2021

Residential Tenancy Branch