



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, DRI, FFT

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated February 10, 2021 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants and the "male landlord" did not attend this hearing, which lasted approximately 12 minutes. The female landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began 9:30 a.m. and ended at 9:42 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed that she had permission to represent the male landlord, who is her husband, at this hearing (collectively "landlords").

At the outset of the hearing, I informed the landlord that she was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord affirmed under oath that she was not and would not record this hearing.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord stated that she was ready to proceed with the hearing, and she did not make any adjournment or accommodation requests.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlord stated that she served the landlords' written evidence package to the tenants by way of sending a copy to the tenants' daughter on Whatsapp messenger over the phone. I informed the landlord that I could not consider the landlords' evidence package at this hearing or in my decision because the tenants were not properly served with the evidence, since Whatsapp messenger service is not permitted by section 88 of the *Act*.

The landlord testified that the tenants were served with the landlords' 1 Month Notice on February 10, 2021, by way of posting to the tenants' rental unit door. The tenants stated in their application that they received the notice on February 10, 2021, by way of posting to their rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' 1 Month Notice on February 13, 2021, three days after its posting.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the *RTB Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Are the landlords entitled to an Order of Possession for cause based on the 1 Month Notice?

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on March 8, 2019. Monthly rent in the current amount of \$850.00 is payable on the first day of each month. Rent was initially due on the 15th day of each month until the year 2021, when it was changed by the landlords to the first day of each month because the tenants kept paying rent late, closer to the end of the month. A security deposit of \$425.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord confirmed that the landlords issued the 1 Month Notice to the tenants, which has an effective move-out date of March 15, 2021, for the following reasons:

- *Tenant has allowed an unreasonable number of occupants in the unit/site/property park;*
- *Tenant is repeatedly late paying rent;*
- *Tenant or a person permitted on the property by the tenant has:*
 - *put the landlord's property at significant risk;*
- *Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.*

The landlord testified regarding the following facts. The landlords seek an order of possession against the tenants. The landlords issued the 1 Month Notice because the tenants have paid rent repeatedly late to the landlords. The tenants paid rent late every month from March to December 2020.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants were deemed to have received the 1 Month Notice on February 13, 2021 and filed this application to dispute it on February 16, 2020. Therefore, the tenants are within the time limit under the *Act*. However, the tenants did not appear at this hearing to present their submissions.

On a balance of probabilities and for the reasons stated below, I find that the landlords issued the 1 Month Notice for a valid reason. I accept the undisputed testimony of the landlord.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement. Rent was due on the 15th day of each month, in the year 2020, as per the landlord's testimony and the tenants' application stating that rent was due on the "middle day of the month."

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." The landlords provided undisputed evidence that the tenants were late paying rent ten times during this tenancy from March to December 2020. Accordingly, I find that the tenants were repeatedly late paying rent. I find that the landlords' 1 Month Notice was issued for a valid reason. As I have found one of the four reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

Section 55(1) of the *Act* reads as follows:

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.*

As noted above, I dismissed the tenants' application to cancel the landlords' 1 Month Notice, without leave to reapply.

I find that this tenancy ended on March 31, 2021, the corrected effective date on the 1 Month Notice. I find that the landlords are entitled to an order of possession, effective at 1:00 p.m. on May 31, 2021, pursuant to section 55 of the *Act*.

The landlord confirmed that the tenants have paid rent to date, so I find that the tenants are entitled to possession of the rental unit until the end of the month, since the landlords changed the rent due date to the first day of each month in the year 2021.

I find that the landlords did not waive their right to enforce the 1 Month Notice by accepting rent from the tenants after the effective date of the notice. The landlords did not withdraw their notice, they continued to pursue an order of possession against the tenants at this hearing, and the tenants filed a dispute of the notice in this application. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective at 1:00 p.m. on May 31, 2021. Should the tenant(s) or anyone 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 21, 2021

Residential Tenancy Branch