



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT
 OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 10, 2021. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued March 3, 2020, for an order for the Landlord to comply with the Act and for a monetary order for compensation for money owed.

The Landlord’s Application for Dispute Resolution was made on March 16, 2021. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued March 3, 2020, and to recover their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires 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 evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as two other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claims for an order for the Landlord to comply with the Act and for a monetary order for compensation for money owed.

Issues to be Decided

- Should the One-Month Notice issued on March 3, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord 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.

Both parties agreed that the Landlord served the One-Month Notice to end tenancy to the Tenant on March 3, 2021, by personal service to the Tenant. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenant must move out of the rental unit by April 30, 2021. The Notice informed the Tenant of the right to dispute the Notice within 10 days after

receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is 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 Tenant filed to dispute the Notice on March 10, 2021.

The Landlord testified that the Tenant has been late in paying their rent three times this past year, October 2020, November 2020, and January 2021.

The Tenant testified that they agreed that they had paid their rent late in October 2020, November 2020, and January 2021.

Analysis

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

I find that the Tenant received the One-Month Notice on March 3, 2021. Pursuant to section 47 of the *Act*, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Therefore, I find the Tenant had until March 13, 2021, to file their application to dispute this One-Month Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on March 10, 2021, within the statutory time limit.

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 agreed-upon testimony of these parties that the Tenant had paid their rent late three times in the last 12 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 Tenant's application to cancel the One-Month Notice issued on March 3, 2021.

Section 55 (1) of the *Act* states the following:

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 One-Month Notice, and I find that this Notice complies with section 52 of the *Act*.

As I have dismissed the Tenant's application to dispute the One-Month Notice, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. I grant the Landlord permission to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Conclusion

The Tenant's Application to cancel the One-Month Notice, issued on March 3, 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 Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of the monetary award contained in this decision.

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: June 21, 2021

Residential Tenancy Branch