



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC QUESNEL LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated March 31, 2021 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The individual landlord KG ("landlord") and the landlord owner PK ("owner") attended the hearing and were each 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 9:46 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, the owner, and I were the only people who called into this teleconference.

The owner confirmed that he owned the landlord company named in this application. He said that the landlord company owned the rental unit. The owner stated that the landlord had permission to speak on his and the landlord company's behalf as an agent (collectively "landlords").

At the outset of the hearing, I informed the landlords that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord and the owner both affirmed under oath that they would not record this hearing.

I explained the hearing process to the landlords. The landlords had an opportunity to ask questions. The landlords stated that they were ready to proceed with the hearing. The landlords did not make any adjournment or accommodation requests.

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

The landlord stated that he personally served the tenant with the landlords' evidence on July 8, 2021. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlords' evidence on July 8, 2021.

The landlord testified that the tenant was served with the landlords' 1 Month Notice on March 31, 2021, by way of posting to the tenant's rental unit door. The tenant stated in this application that he received the notice on the above date by the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 1 Month Notice on April 3, 2021, three days after its posting.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* 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 tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's 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 documentary evidence and the testimony of the landlords, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on June 1, 2018. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$150.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord confirmed that the 1 Month Notice, which has an effective move-out date of April 30, 2021, was issued to the tenant for the following reason:

- *Tenant is repeatedly late paying rent.*

The landlords seek an order of possession against the tenant. The landlord stated that the tenant was late paying rent 5 times in 2021 (January 4, February 4, March 2, April 9, May 3), 11 times in 2020 (January 6, February 6, March 2, April 8, May 6, June 17, July 2, August 9, August 27, September 16, November 2), and 12 times in 2019.

The landlord stated that he personally spoke to the tenant on April 7, 2021, when he served the tenant with a notice to end tenancy for unpaid rent and the tenant gave him a copy of this application. He said that he told the tenant that he was proceeding to this hearing to seek an order of possession against the tenant. The owner stated that he personally spoke to the tenant on May 27, 2021 and June 17, 2021, and told him that his rent was always late, he was proceeding to this hearing, and the tenant had to move out because he was given a lot of chances and continued to pay rent late.

The tenant provided documentary evidence with this application, to show when he sent e-transfer rent payments to the landlord. He provided records to show he sent rent late 5 times on November 3, 2020, December 2, 2020, January 2, 2021, February 4, 2021, and March 2, 2021. In his online RTB application description, the tenant stated: "Says late payment of rent but to my knowledge tenants have 5 business days to pay rent I also have 2 children living with me."

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant was deemed to have received the 1 Month Notice on April 3, 2021 and filed this application to dispute it on April 1, 2021. Therefore, he is within the time limit under the *Act*. However, the tenant did not appear at this hearing to present his 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 landlords.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. In this case, rent is due on the first day of each month. The tenant indicated in his online RTB application description: "Rent: \$850.00, First day of the month."

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." Both the tenant and the landlords provided undisputed evidence that the tenant was late paying rent more than three times during this tenancy in the years 2020 and 2021. Accordingly, I find that the tenant was repeatedly late paying rent. I find that the landlords' 1 Month Notice was issued for a valid reason.

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 tenant's application to cancel the landlords' 1 Month Notice, without leave to reapply.

I find that this tenancy ended on May 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 July 31, 2021, pursuant to section 55 of the *Act*. The landlord confirmed that the tenant has paid rent to date, including for June and July 2021, so I find that the tenant is entitled to possession of the rental unit until the end of July 2021.

I find that the landlords did not waive their right to enforce the 1 Month Notice by accepting rent from the tenant after the effective date of the notice. The landlords did not withdraw their notice, they continued to pursue an order of possession against the tenant at this hearing, and the tenant filed a dispute of the notice in this application. The landlords repeatedly spoke to the tenant in April, May and June 2021, to inform him that his rent was late, and they were pursuing an order of possession against him at this hearing. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective at 1:00 p.m. on July 31, 2021. Should the tenant 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: July 20, 2021

Residential Tenancy Branch