



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, LRE, LAT, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notices to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application') and amendment. In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application and amendment. The tenants testified that the landlord dropped off their evidentiary materials which contained several loose documents that were not numbered. The tenants expressed concern that they were missing contents of the package. After discussing the issue with both parties, and confirming the contents of the landlord's written materials, I am satisfied that both

parties were served with each other's' evidentiary materials in accordance with section 88 of the *Act*.

The tenants confirmed receipt of the 1 Month Notice dated March 22, 2021, and the 1 Month Notice dated May 3, 2021. Accordingly, I find that both 1 Month Notices were served to the tenants in accordance with section 88 of the *Act*.

Preliminary Issue – Tenant's' Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 11:00 am, and ended at 12:03 p.m. As the time allotted was insufficient to allow the tenants' other claims to be heard along with the application to cancel the two 1 Month Notices to End Tenancy, I exercise my discretion to dismiss the portions of the tenants' application unrelated to the 1 Month Notices with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issues(s) to be Decided

Should the landlord's 1 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on October 1, 2020, and continued on a month-to-month basis after April 30, 2021. Monthly rent is currently set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,000.00, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice on March 22, 2021 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenants were served with a second 1 Month Notice on May 3, 2021 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
2. The tenant is repeatedly late paying rent.

The landlord submitted notifications of electronic transfers from the tenants for rent payments on December 3, 2020, February 2, 2021, and on May 2, 2021. The landlord testified that rent was payable on the first, but the tenants were late with their payments on at least three occasions. The landlord testified that the tenants were never given permission to make these late rent payments. The landlord is also seeking an end of this tenancy for excessively disturbing the lower tenant. The landlord testified that the tenants continue disturb the other tenant by making excessive noise.

The tenants do not dispute that the landlord received rent payments on those dates, but testified that an Order of Possession is not justified as there were issues with banks. The tenants testified that they submitted the payments before midnight, but the landlord would not receive the notification until the next day. The tenants testified that there were also issues with the closures of banks due to the pandemic. Furthermore, the tenants testified that the landlords indicated on the tenancy agreement that there was a late fee for late rent. The tenants felt that this late fee implied that they had permission to make late rent payments, as long as they paid the fee and eventually paid the rent in full. The tenants submitted a copy of the tenancy agreement which states the following: "The lessee will pay the following fee if the rent is late: \$10 per day until paid in full".

The tenants dispute that they had caused an unreasonable amount of disturbance, and felt that much of the complaints stemmed from conflict with the other tenant and the lack of soundproof in the home. The tenants testified that the noise that the other tenant complained about was normal living noise, and was not considered excessive to the extent that the tenancy should end on those grounds.

The tenant called a witness, SJ, who was a neighbour. SJ testified that she had never been disturbed by the tenants.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenants filed their applications to dispute

the notices with the required time limit under the *Act*, the onus therefore shifts to the landlord to justify the basis of the 1 Month Notices to End Tenancy.

Although the tenants provided an explanation for why the landlord received the rent late for the months of December 2020, February 2021, and May 2021, I find that the repeated late rent payments meet the criteria for sufficient cause to end this tenancy under section 47(1)(b) of the *Act*.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby 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...

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Although the tenants felt that the bank played a role in their late rent payments, I find that these issues are not exceptional or unforeseeable. As rent is payable on the first of the month, the responsibility lies with the tenants to make appropriate arrangements to ensure that payment is made on time, taken in consideration processing times and bank hours and closures. As the criteria for repeatedly late rent payments under section 47(1)(b) is a minimum of three late rent payments, I find that the tenants had ample opportunity to address this issue, and adjust their payment schedule accordingly to ensure that payments are received on time by the landlord.

The tenants also felt that the landlord had implied that late rent payments were okay given the fact that there was a \$10.00 per day charge for late rent payments as noted on the tenancy agreement. In considering this explanation, I note that section 7 of the Residential Policy Regulation states the following about non-refundable fees, which includes fees for late rent payments:

- 7** (1)A landlord may charge any of the following non-refundable fees:
- (a)direct cost of replacing keys or other access devices;
 - (b)direct cost of additional keys or other access devices requested by the tenant;
 - (c)a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d)subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e)subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f)a move-in or move-out fee charged by a strata corporation to the landlord;

(g)a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2)A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I note that the Regulation does allow the landlord to charge a fee for late rent payments, which is not to exceed \$25.00. Although the clause included in the late rent payment does not indicate a maximum amount, I find that the inclusion of a late fee does not waive the landlord's right to issue a 10 Day Notice to End Tenancy for Unpaid Rent, or a 1 Month Notice to End Tenancy, as long as the criteria for those notices are met. The purpose of including this late rent payment clause is to cover the administration costs associated with the late rent payments, and does not serve as an alternative for making rent payments on time, as required by the tenancy agreement. The inclusion of a fee is not justification or waiver of a tenant's obligations to make their payments on time as required by section 26 of the Act which states:

Rules about payment and non-payment of rent

26 (1)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.

In this case, I find that that the landlord has met their onus for ending the tenancy on the grounds of repeated late rent payments. I do not find that permission was granted for the late rent payments, either expressed or implied. I find that that the expectation is clear that rent is due on the first of the month, and is subject to late fees as noted on the tenancy agreement. As noted in the Policy Guideline, the minimum number of late rent payments is three, which in this case the minimum was met. I am not satisfied that

the tenants provided sufficient justification for why they failed to pay the rent on time on these three occasions.

I find that the landlord has met their burden of proof to support that the tenancy should end on the grounds of repeated late rent payments. Accordingly, I am dismissing the tenants' application to cancel the 1 Month Notice dated May 3, 2021 without leave to reapply.

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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice dated May 3, 2021 complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, June 30, 2021. As that date has passed, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

As there was insufficient time to deal with the other issues in the tenants' application unrelated to the 1 Month Notices, the tenants' other applications were dismissed with leave to reapply.

I dismiss the tenants' application to cancel the 1 Month Notice dated May 3, 2021 without leave to reapply. I find that the landlord's 1 Month Notice dated May 3, 2021 is valid and effective as of June 30, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants 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 15, 2021

Residential Tenancy Branch