



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC, CNR
For the landlord: OPC, FFL

Introduction

On April 22, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”). They also applied for cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the landlord on April 12, 2021.

On May 17, 2021 the landlord applied for an order of possession of the rental unit, and recompense of the Application filing fee. The landlord’s Application was crossed with that of the tenant because they concern the same tenancy and involve the same facts and same remedies.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 27, 2021. Both parties attended the teleconference hearing.

Preliminary Matter

At the start of the hearing, the tenant advised they did not provide notice of their Application or the hearing information to the landlord. The landlord stated they did not know of the tenant’s Application involving each of the notices to end tenancy issued in April 2021. Additionally, the tenant confirmed they did not prepare or forward any documentary evidence to either the landlord or the Residential Tenancy Branch as part of their Application.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. The subsection (3) states: “. . . a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

The *Act* s. 89 gives the rules for service of the application for dispute resolution. This is by leaving a copy with the person or their agent or sending a copy via registered mail.

Additionally, the *Residential Tenancy Branch Rules of Procedure* that are crafted to ensure a fair process specify the documents to be served by the applicant (here, the tenant) to the respondent (here, the landlord). These are: Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

The tenant did not provide a copy of the notice of dispute resolution proceeding – that document that is generated when a person applies for dispute resolution – to the landlord either through mail or in person. For this reason, I dismiss their Application in its entirety.

One piece of the tenant's Application concerns the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”), signed by the landlord on April 9, 2021. The landlord's Application here is for an Order of Possession stemming from that same One-Month Notice. Because this concerns the same One-Month Notice, I conclude the landlord is not prejudiced by having the tenant attend, in response to the landlord's own Application, and speaking to the issue at hand. The tenant did not prepare or serve documentary evidence; therefore, the landlord is not precluded of their right to a full viewing of the tenant's case in advance of the hearing.

After confirming that the tenant received the landlord's prepared documentary evidence via another occupant at the rental unit, I proceeded with the hearing focusing only on the sole issue of the One-Month Notice.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause, pursuant to s. 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the current tenancy agreement between the parties. This shows the tenancy started on April 1, 2017, continuing on a month-to-month basis after the initial one-year fixed term. The rent started at \$1,200 and during the tenancy increased to \$1,230. The agreement specifies: "Rent in full must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date or dates."

The landlord provided a copy of the One-Month Notice. They signed this document on April 9, 2021, and then served it to the tenant via ordinary mail and registered mail on April 12, 2021. The document was issued for the reason, indicated on page 2, that "Tenant is repeatedly late paying rent." In the detail section, the landlord recorded that "In the last 12 months the tenant has been late paying rent and has had 6 NSF Cheques for rent." They then provided a list of March 2020 through to December 2020 in detail.

The landlord served this document to the tenant via registered mail and ordinary mail on April 12, 2021. The landlord provided the tracking number for Canada Post to show that the document was not picked up after re-delivery attempts and sent back to the landlord on May 6, 2021. They testified that they had a discussion with the tenant about the One-Month Notice; as the landlord recalls, the tenant told the landlord they had received the document in the mail and were going to contest it. The tenant confirmed this detail in the hearing.

The landlord provided a ledger showing all payments and transactions from the outset of the tenancy through to May 2021. They highlighted all transactions from October 2019 forward where rent was received late. This shows several entries where the cheques were returned to the landlord as NSF. In the hearing, the landlord reiterated

this pattern had continued for quite some time prior to the issuance of this One-Month Notice. They added the detail that they had issued other notices to end tenancy in the past precisely for the reason of non-payment of rent; however, the tenant had made late payments each time.

The tenant admitted that rent payments were not received on time in several instances. They provided details on their current financial situation, and the impact that other debts have on their ability to pay rent, either fully or in a timely fashion.

Analysis

The *Act* s. 47 allows a landlord to end a tenancy by giving a One-Month Notice if the tenant is repeatedly late paying rent.

By s. 47(4), a tenant who receives a One-Month Notice has 10 days to apply for Dispute Resolution to cancel the notice.

Here, I accept as fact that the landlord mailed the One-Month Notice on April 12, 2021. As stated by the landlord in the hearing, they sent the document via registered mail on the same day as ordinary mail. The landlord presented that the tenant did not accept the registered mail; however, I deem service of the One-Month Notice completed on April 17, 2021, via original mail as per s. 90(a) of the *Act*. I conclude the landlord completed service in like manner because both parties agreed they discussed the issuance of the One-Month Notice when the tenant advised the landlord that they were challenging via dispute resolution.

As to the subject matter of the One-Month Notice, and the reason for the landlord seeking to end the tenancy, I look to the evidence and testimony provided by either side. The ledger information provided by the landlord shows repeated late payments. This matches to what the landlord provided on the One-Month Notice for details.

In the hearing, the tenant acknowledged repeated late payments of rent, along with insufficient funds when the landlord tried to deposit. They set out a variety of reasons involving hardship.

I find the tenant did not offset the evidence presented by the landlord to show either anomalies or inaccuracies by the landlord. I find the record clearly shows the tenant's repeated late payments of rent. The tenant does not hold a legal reason, either through

tacit or implied agreement, to continually pay late rent as shown in the ledger. This runs counter to the specific portion of the tenancy agreement that states the tenant must pay rent in full one or before the first calendar day of each month. There was no evidence showing agreement between the parties that the tenant could pay rent on different dates.

For these reasons, I find the One-Month Notice issued by the landlord on April 9, 2021 is valid.

Under s. 55 of the *Act*, when the tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied the One-Month Notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the One-Month Notice complies with the requirements of form and content; therefore, I grant the landlord an order of possession.

Because the landlord was successful in their Application, by s. 72 of the *Act*, I award the \$100 Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the tenant's Application for a cancellation of the One-Month Notice.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made by the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 27, 2021

Residential Tenancy Branch