



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RP, LRE, PSF, AAT, LAT, FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on August 26, 2021. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' amendment and evidence package around 2 weeks before this hearing, and was willing to proceed to hear and discuss all matters identified on the Tenants' application, and in the Tenants' evidence package. Neither party took issue with the service of the evidence presented. I find both parties sufficiently served each other with all evidence and hearing documentation.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 1 Month Notice to End Tenancy for Cause (1 Month Notice)
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent

Preliminary Matters

The Tenants received multiple 10 Day Notices over the last few months. The Landlord acknowledged issuing the 10 Day Notices (when rent was late), but stated that each time the 10 Day Notices were issued, the Tenant paid rent, in full, the same day or within a couple days of the Notice being issued. As a result, the Landlord acknowledged that they cannot obtain an Order of Possession, based on those 10 Day Notices, as rent was paid, within the allowable 5 days. Both the Landlord and the Tenant agreed to cancel the 10 Day Notices issued thus far, and to focus this hearing on the 1 Month Notices issued.

Accordingly, I hereby amend the application, by mutual consent, to remove the Tenant's request to cancel the 10 Day Notices, and as agreed upon, they are of no force or effect.

Issues to be Decided

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

Background and Evidence

The Landlord issued multiple 1 Month Notices, one on or around April 13, 2021, another on or around May 13, 2021, and a third 1 Month Notice on July 6, 2021. Although multiple 1 Month Notices were issued, I will focus my analysis on the most recent 1 Month Notice, dated July 6, 2021.

In this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. Not all evidence and testimony

will be summarized, unless it is pertinent to my determinations regarding the July 6, 2021 1 Month Notice.

As per the Tenancy Agreement provided into evidence, the Tenant rents a house, and some adjoining land (part of a larger farm property owned by the Landlord). Rent is set at \$2,000.00 and is due on the first of the month. The tenancy started on April 1, 2021, and was supposed to be a fixed term 1 year in length.

The Landlord stated that the most recent 1 Month Notice was issued because the Tenants are repeatedly late paying rent. The Landlord testified that they mailed, by registered mail, a copy of the July 6, 2021, 1 Month Notice on July 6, 2021. Tracking information was provided into evidence. The Tenant received it but did not recall when. The Tenant filed an amendment on July 16, 2021, seeking to cancel the July 6, 2021, 1 Month Notice.

The Landlord stated that Tenants were late paying rent in May, June, and July, and as a result, this 1 Month Notice was issued after the Tenants' third late rent payment. More specifically, the Landlord stated that the Tenants pay rent by e-transfer, and the Landlord provided copies of the e-transfers, which show that rent was paid on May 3, 2021, June 5, 2021, and July 6, 2021.

The Tenants acknowledged paying rent late but stated that it was paid late in May because the bank was closed on the weekends, and the 1st of the month fell on a Saturday. The Tenants stated that sometimes he pays rent late because his paycheck cannot be accessed until the first Monday after the 1st of the month has passed. The Tenants also stated that June and July were late due to the fact he has unreliable internet, and he had to wait to send the e-transfers.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of her 1 Month Notices, and I first turn to the most recent 1 Month Notice, issued on July 6, 2021. The issue the Landlord identified on this Notice was:

Tenant is repeatedly late paying rent.

As per the tenancy agreement provided into evidence, it is clear that rent is due on the first of the month. Further, it is clear the Tenant has been late paying rent 3 times (May, June, July) at the time the 1 Month Notice was issued. I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide 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.

Based on the evidence before me, I find there is sufficient evidence to demonstrate that rent was late 3 times leading up to the issuance of the July 6, 2021, 1 Month Notice. As such, I find the Landlord has sufficient cause to issue this Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the other 1 Month Notices.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. Since the Tenant has paid rent until the end of August 2021, I find the Landlord is entitled to an order of possession effective **August 31, 2021, at 1pm**, after service on the Tenants.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **August 31, 2021, at 1pm** after service on the Tenants. This order must be served on the tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 26, 2021

Residential Tenancy Branch