



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenants for a cancellation of a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on December 1, 2015 with rent of \$567.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit and \$300.00 as a pet deposit. The Landlord named in the application is the current Landlord and replaced the landlord named on the tenancy agreement as of February 2020. Rent payable as of February 2020 was noted in the Landlord’s rent roll to be \$600.00 however the Landlord has no record of any rent increase being given to the Tenant. On April 27, 2021 the Tenants received a one month notice to end tenancy

for cause date April 27, 2021 (the "Notice"). The stated reason for the Notice is that the Tenants are repeatedly late paying rent.

The Landlord states that the Tenants have paid rent late for every month since February 2020. The Tenant states that the Landlord never said anything about late rent payments however the Tenant knows that rent is payable on the first day of each month. The Landlord states that the Tenant was verbally informed each month for a few months after February 2020 that rents were late and requested rents be paid on time. The Landlord states that a text dated August 3, 2020 was also sent to the Tenant about the late rents. The Landlord states that after this date the Landlord stopped giving or sending reminders as the Tenant would either not respond or would swear at the Landlord.

The Landlord seeks an order of possession and agrees to have the effective date of that order of possession set for October 31, 2021. The Tenant agrees that if the Notice is upheld the tenancy will end October 31, 2021.

Analysis

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Given the Landlord's undisputed evidence of late rent payments, the Landlord's supported evidence of rental due date reminder and the Tenant's evidence that they are aware that rent is payable on the first day of each month I find on a balance of probabilities that the Tenant has been repeatedly late paying rent. For this reason, I find that the Notice is valid for its stated reason. I dismiss the Tenant's claim to cancel the Notice.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act in

relation to form and content provides that in order to be effective, a notice to end a tenancy 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.

As the Notice complies in form and content and has been found to be valid, I find that the Landlord is entitled to an order of possession. Given the agreement of both Parties I grant the Landlord an order of possession effective 1:00 p.m. on October 31, 2021.

Section 19 of the Act provides as follows:

- (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Given the undisputed evidence of the monthly rent starting at \$567.00, I find that the Landlord could only collect \$283.50 for each of the security and pet deposits to a total of \$567.00. Given the undisputed evidence that the Landlord collected 300.00 for each of the security and pet deposits for a total of \$600.00 I find that the Landlord collected more than they were entitled to and that the Tenants are entitled to return of \$33.00. I therefore order the Landlord to forthwith pay the Tenants the overpaid amount of **\$33.00.**

Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. If the Landlord did not increase the rent in accordance with the Act, the Tenants remain at liberty to make an application in relation to this matter.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Tenant an order under Section 67 of the Act for **\$33.00**. If necessary, this order may be filed in the Small Claims Court and 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 Act.

Dated: September 10, 2021

Residential Tenancy Branch