



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chateau Gardens and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to service of a notice to end the tenancy and accepting rent?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this fixed-term tenancy began on November 3, 2017 and reverted to a month-to-month tenancy after November 30, 2018, and the tenant still resides in the rental unit. Rent in the amount of \$795.00 is payable on the 1st day of each month and there are no rental arrears. At the

outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$397.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 3 stories, and about 40 units. The landlord's agent does not reside on the property.

The landlord further testified that on May 5, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by leaving it under the door, with a co-worker who witnessed it. A copy of the Notice has been provided for this hearing and it is dated May 5, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states: Tenant is repeatedly late paying rent.

The tenant was late paying rent in December, 2019; September, 2020; March, 2021 and May, 2021, none of which were during the time that COVID restrictions were in place. When the tenant told the landlord that the tenant had problems with employment during the COVID period, the landlord said that it was not a problem. A Tenant Ledger has also been provided for this hearing, showing that September, 2020 rent was paid on the 3rd of the month, and rent for March, 2021 was paid on the 12th of the month and rent for May, 2021 was paid on the 1st of the month.

The tenant also has 2 storage units which he pays \$100.00 per year for each. Incident reports have also been provided about the tenant's refusal to pay the storage fees and key replacement. The tenant is belligerent with staff and the landlord no longer wishes to put up with it, which is why the landlord has provided text messages dated after the Notice was issued. The landlord's agents have tried to work with the tenant, but the tenant meets them with aggressive behaviour. It is unfair to management to have a tenant not pay rent on time and when asked for it, the tenant is difficult.

The landlord's witness (WH) testified that the witness is a property manager for the landlord, however duties do not include dealing with the payment of rent.

The witness received text messages from the tenant about the tenant's rent being returned N.S.F. stating that the landlord didn't take the rent payment out on time, but tenants don't understand that pre-authorized payments come out on the first of the month; that's how it's set up with the bank. The tenant asked if the witness could re-pull the payment, to which the witness replied that it would be no problem. The witness believes that was in May, 2021.

The witness and a co-worker went to the rental unit and gave the tenant e-transfer information in order to replace a key that the tenant had misplaced, and that was the only way to collect it. Rent was not mentioned, but the tenant kept talking over the

witness and the co-worker and the tenant was not listening. That was the only conversation the witness has had with the tenant.

The tenant testified that he has resided in the rental unit for well over 3 years, and rent is usually paid on time. The rent is not consistently late, but the tenant was struggling with sporadic work.

The tenant went to speak with the witness' co-worker and the tenant was quite distressed. The co-worker told the tenant that he is a good tenant and the landlord would work with him. There was only 1 N.S.F. rent transfer that was supposed to be taken on the 1st, or on the Monday, but when the landlord took money on the Wednesday, the bank had taken service fees. If the landlord had taken it out on the 1st of the month, the \$10.00 service fee would not have been taken out prior. The tenant called the witness' co-worker right away and said that he would deposit the money right away. The co-worker said, "No worries, stuff happens." The following day the tenant arrived home and found the notice to end the tenancy.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord has no control over rent being pulled; the money is withdrawn on the 1st of the month or the next business day, but that falls with the bank.

SUBMISSIONS OF THE TENANT:

The tenant was continually told not to worry, that stuff happens.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord testified that the tenant was late with rent for the months of December, 2019; September, 2020; March, 2021 and May, 2021. A tenant must pay rent when it is due. Also, three late payments are the minimum required to end a tenancy for repeated late rent.

I refer to Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent which states, in part: “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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.”

I have reviewed the Tenant Ledger and I accept that the tenant was late with rent in December, 2019; September, 2020 as well as March, 2021. The landlord’s agent testified that rent was also late in May, 2021, but not according to the Tenant Ledger, which shows that rent was collected on May 1, 2021. A reminder letter was sent to the tenant on May 8, 2020 with respect to the rent for May, 2020. Other payments were requested by the landlord for storage fees, but I find that is not relevant to repeated late rent. I find that the landlord has established 2 late payments of rent and the tenant cannot be said to be repeatedly late, and I cancel the One Month Notice to End Tenancy for Cause.

The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement respecting the automatic debits for rent payment and by sliding the notice to end the tenancy under the door of the rental unit. I agree with the landlord that the automatic withdrawals happen when they are processed through the bank, not when the landlord chooses to have it processed.

The *Act* permits a landlord to serve a notice to end a tenancy by attaching a copy to a door or other conspicuous place at the address at which the person resides. I agree with the tenant that sliding it under the door is not the same as attaching to a conspicuous place, and I order that similar notices be served in accordance with Section 88 of the *Act*.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 5, 2021 is hereby cancelled and the tenancy continues.

I hereby order the landlord to serve documents to the tenant in accordance with Section 88 of the *Residential Tenancy Act*.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 17, 2021

Residential Tenancy Branch