



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

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

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The female landlord DC gave the following testimony. The tenancy began on May 1, 2019 with the rent of \$1200.00 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on April 30, 2021 with an effective date of May 31, 2021 for the following reason:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

DC testified that the tenant was late in paying the rent four times since January 2021 when she issued the notice. The payment dates were as follows January 31, 2021, February 5, 2021, March 9, 2021 and April 2, 2021. DC testified that even after giving the tenant notice she paid the May rent late on the 2nd of the month. The male landlord DC gave the following testimony. DC testified that the tenant is attempting to make this about her former employment with them, but its not. DC testified that he told the tenant it was about late payment of rent and not her past employment with him. The landlords request an order of possession.

The tenant gave the following testimony. The tenant agreed that she was late in paying the rent but attributes it to the landlords not paying her on time for her work and in the amount that was verbally promised. The tenant testified that she did all kinds of work for the landlord and that they promised her a larger salary than what they were paying her. The tenant testified that the landlords have twisted this all around and are trying to take advantage of her.

Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord needs only demonstrate that one of the reasons identified in the One Month Notice is valid in order to end a tenancy for cause. The tenant brought up the issue of employment, however she did not provide sufficient documentation to corroborate her statements. The landlords confirmed that she did do some odd jobs for her for a short time but that ended over a year ago as they were not satisfied with her work. The landlords were very clear, that the issue was about late payment of rent and not anything to do with past employment. I accept the landlord's testimony and find it to be credible and reliable.

In this case, the landlord has submitted documentary evidence of the e-transfers that the tenant paid rent late on at least three occasions since January 2021. The landlord's documentation clearly shows a late payment for January 2021, February 2021, March 2021, April 2021 and again for June 2021, despite the tenant being served a notice in April 2021. The tenant's pattern did not change despite being served a notice for that reason.

Residential Tenancy Policy Guideline #38 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...

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...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions since January 2021. For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the One Month Notice for the tenant's late payment of rent.

Section 55 of the *Act* reads in part 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.

I find that the landlord's One Month Notice was issued on the correct form and included all the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the One Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

The tenants request to be granted an order to have the landlord comply with the Act, regulation or tenancy agreement is dismissed in its entirety without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants application is dismissed in its entirety without leave to reapply. 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 16, 2021

Residential Tenancy Branch