



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was conducted based on the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated May 23, 2021 (1 Month Notice). The filing fee was waived for this application.

The tenants and the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having been served with documentary evidence from the other party and had time to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Pursuant to section 64(3)(c) of the Act, the parties consented to the correcting the surname of the landlord and the rental unit address, both of which contained errors by the tenants. The spelling of the landlord's surname was corrected and the rental unit address was corrected to include "Main" and Avenue, the latter of which was missing from the application.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2020 and after 12 months reverted to a month-to-month tenancy. Monthly rent of \$1,800.00 is due on the first day of each month.

The tenants confirmed that they received the 1 Month Notice on May 23, 2021 based on their application details. The tenants disputed the 1 Month Notice on May 24, 2021. The 1 Month Notice alleges 6 causes, including the repeated late payment of rent and 5 other causes. The tenants do not agree with any causes listed by the landlord.

During the hearing, the parties confirmed the following:

1. September 1, 2020 rent was not paid on September 1, 2020. There is no dispute that the tenants' cheque was returned as Non-Sufficient Funds (NSF). The landlord affirmed the rent was paid 2 weeks after September 1, 2020 whereas the tenants affirmed that the rent was paid in cash on either September 3rd or 4th of 2021. The landlord stated that it takes at least a week for the bank to advise the landlord of an NSF cheque so the rent could not have been paid on September 3rd or 4th of 2020 as claimed.
2. November 1, 2020 rent was not paid on November 1, 2020. There is no dispute that the tenants' cheque was returned as NSF. The landlord affirmed the rent was paid 2 weeks after November 1, 2020 whereas the tenants affirmed that the rent was paid in cash on either November 3rd or 4th of 2020. The landlord stated

that it takes at least a week for the bank to advise the landlord of an NSF cheque so the rent could not have been paid on November 3rd or 4th of 2020 as claimed.

3. January 1, 2021 rent was not paid in full by the tenants on January 1, 2021. The landlord stated that the tenants failed to pay \$163.00 of January 1, 2021 rent. The tenants admitted that they withheld \$163.00 for utilities they felt the landlord owed them and confirmed that they did not have any authority from an Arbitrator to withhold any amount of rent for January 2021.

While the tenants made some offers for a mutual agreement, the landlord did not want to agree to a mutual agreement and is seeking an order of possession. The landlord made it clear that they do not wish to continue the tenancy. The landlord confirmed that money for use and occupancy was paid by the tenants for September 2021.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

RTB Policy Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of facts before me I find that the tenants paid their rent late on at least three occasions before the 1 Month Notice was issued.

Therefore, I find it is not necessary to consider further testimony regarding additional late payments of rent. In addition, I find it is not necessary to consider the other 5 causes listed on the 1 Month Notice as the landlord succeeded in proving the first cause. Therefore, **I dismiss** the tenants' application to cancel the 1 Month Notice and I uphold the landlord's 1 Month Notice dated May 23, 2021 with an effective vacancy date of June 30, 2021. Section 55 of the Act applies and states:

Order of possession for the landlord

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.

[emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. Therefore, **I grant** the landlord an order of possession pursuant to section 55 of the Act **effective September 30, 2021 at 1:00 p.m.** as the effective vacancy date of the 1 Month Notice has already passed and money for use and occupancy has been paid for the month of September 2021.

I find the tenancy ended on June 30, 2021, which was the effective vacancy date listed on the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld and is valid.

The landlord has been granted an order of possession effective September 30, 2021 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. Should the tenants fail to vacate the rental unit, the tenants are cautioned that they may be liable for all costs related to enforcing the order of possession. The decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2021

Residential Tenancy Branch