



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, RP, LRE, LAT, OLC

Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). In addition, they applied for additional various relief under sections 31, 32, 62, 70, and 72 of the Act.

Both parties attended the hearing on September 27, 2021. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue.

As such, the tenants’ claims for relief under sections 31, 32, 62, and 70 of the Act are dismissed *with* leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began at the end of January (or at the beginning of February) 2021. Monthly rent is \$2,500.00 and it is due on the first of the month. There is no security or pet damage deposits. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The landlord testified that she issued the Notice on May 18, 2021. The Notice was served by Canada Post registered mail which was returned unclaimed. Shortly thereafter it was sent to the tenant by email, which the tenant received.

Page two of the Notice lists ten reasons, or grounds, for why it was issued. Given the limited time of these dispute resolution hearings, the landlord was asked to speak to two or three of what she considered to be her strongest grounds. For reasons that are explained below, only testimony and documentary evidence related to the ground of repeated late rent payments will be reproduced and considered within this decision.

The landlord testified that one of the grounds for issuing the Notice is that, other than for the month of June 2021, the tenant has been late paying rent. In other words, the tenant has only paid rent on time for one month out of seven that she has occupied the rental unit. The landlord gave oral and documentary evidence proving the fact that rent is due on the first day of the month, and this is reflected in the tenancy agreement.

In support of the landlord's testimony the landlord provided into evidence several screenshots of Interac e-Transfer email notifications of payments being made. The payor is the tenant's partner, G.N. The notifications indicate rent payments being made on February 4, March 3, April 2, May 3, July 2, and a partial rent payment on August 1, 2021.

In rebuttal, the tenant explained that while the rent was late a few times, it was "no more than a few days late" and that when the Notice was issued there were no rent arrears outstanding. Moreover, the tenant testified that she previously apologized for the late rent payments.

Analysis

When a tenant applies to dispute a One Month Notice to End Tenancy for Cause, as is the case before us, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued for a total of ten grounds under the Act. Only the first reason checked off on page two of the Notice will be addressed: the “Tenant is repeatedly late paying rent.” This reason mirrors [section 47\(1\)\(b\)](#) of the Act which states that “A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] the tenant is repeatedly late paying rent”.

What is meant by “repeatedly late paying rent”?

Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent, April 2004 (available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl38.pdf>) clarifies that “Three late payments are the minimum number sufficient to justify a notice under these provisions.” Further, the policy guideline states that 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.”

In this dispute, the landlord’s evidence persuades me to find that the tenant was repeatedly late paying rent. Indeed, it was acknowledged by the tenant that rent was late, albeit by only a few days. That the rent was paid only a few days late is not a legal defense to the fact that it was not paid on the first day of the month as required by the tenancy agreement.

In summary, then, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving a section 47(1)(b) ground on which the Notice was issued. Having proven this ground, the remaining grounds need not be addressed or considered.

Given this finding, the Notice is found to be valid and the tenant’s application to cancel the Notice is dismissed. The claim to recover the cost of the filing fee is also dismissed.

Pursuant to section 55(1) of the Act, having dismissed the tenant's application, and having found that the Notice complies with section 52 of the Act (form and content), the landlord is issued an order of possession.

Conclusion

The tenant's application for an order cancelling the Notice is dismissed without leave to reapply.

The landlord is granted an order of possession, which must be served on the tenant and which is effective five (5) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 27, 2021

Residential Tenancy Branch