



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OLC RP

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 orders under sections 32 and 62 (for regular repairs) and under section 62 (for landlord compliance) of the Act.

Both parties attended the hearing on October 4, 2021. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. While some of the tenant’s evidence appears to have been served late, the landlord acknowledged having had an opportunity to review the tenant’s evidence; the tenant’s evidence is accepted.

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 tenants’ 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. Accordingly, the claims for orders under sections 32 and 62 are dismissed, with leave to reapply. It should be noted, however, that the tenant was not entirely sure of why those specific claims had been made, and that these may have been made in error when using the online dispute resolution system.

Issue

Is the tenant entitled to an order cancelling the Notice?

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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 31, 2019. Monthly rent is \$2,250.00 and rent is due on the first day of the month. The tenant paid a security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00. A copy of the written tenancy agreement along with an addendum was submitted into evidence.

The landlord testified that they issued the Notice (a copy of which is in evidence) for several reasons, primarily related to breaches of terms contained in the addendum. In addition, one ground for issuing the Notice was for repeated late payments of rent.

It should be noted that, given the evidence and testimony that was provided by both parties in respect of this ground, all other reasons for issuing the Notice other than for repeated late payment of rent will not be reproduced or considered in this decision.

The landlord's property manager testified that the tenant had on several occasions been late paying the rent. Page four of the Notice (which is the first of three pages that were attached to the Notice and which provided details of the causes) contains a list of when late payments of rent were made. Rent was paid late (without landlord consent) for July 2020, September 2020, November 2020, December 2020, and January 2021. There were a few times that the tenant paid late rent but the landlord "excused" the tenant for paying rent late on those occasions.

The tenant did not dispute that they paid the rent late on several occasions. However, the tenant explained that she had been laid off and that times were difficult, given the pandemic. The tenant explained that she was terrified of losing her home, even more so given that she has three children. It was the tenant's position that rent was late but that it was done within the rules regarding late payment of rent during the pandemic.

The tenant testified that she was late paying rent four times but that she gave the landlord notice about those late payments. She "never meant" for the landlord to suffer from being rent late and she pointed out that there are no rent arrears at this point.

Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds or reasons why the Notice was given.

In this dispute, the Notice was issued for, among other reasons that will not be addressed here, the tenant being repeatedly late paying the rent. This is a ground under 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* (policy document dated April 2004, available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl38.pdf>) provides clarification, and states the following:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In this case, the tenant made a total of five late payments. They were all made within a period of a year, and none of the late payments were made far apart from each other. Moreover, the landlord acted in a timely manner by issuing a 10 Day Notice to End Tenancy for Unpaid Rent and by eventually issuing the Notice.

At this point, I acknowledge that the tenant referred in her written submission to “[. . .] COVID RULES THAT ALLOWED RENT TO BE LATE DURING PANDEMIC [. . .]”. And the tenant when giving testimony also referred to certain rules allowing late payment of

rent during the pandemic. However, contrary to the tenant's argument in respect of these rules, at no point since the start of the COVID-19 pandemic has the legislation permitted a tenant to pay rent late.

What the tenant may have had in mind was one or both of the Ministerial orders which prohibited landlords from issuing notices to end tenancy, including a notice to end tenancy for unpaid rent, during a specific time period. (See [Residential Tenancy \(COVID-19\) Order 89/2020](#) and [Residential Tenancy \(COVID-19\) Order 195/2020](#).) Those ministerial orders have since been rescinded. To reiterate: nowhere under the Act, the regulations, or any order is or was it permitted for a tenant to pay rent late.

In summary, 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 the ground under section 47(1)(b) of the Act for which the Notice was given. Thus, having found that the Notice was given for a valid and proven ground, the tenant's application is dismissed.

Section 55(1) of the Act states that

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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

- 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,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

Having reviewed the Notice I find that it complies with section 52 of the Act. And thus, in having dismissed the tenant's application, I grant the landlord an order of possession under section 55(1) of the Act. This order is issued in conjunction with this decision to the landlord.

Conclusion

The 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 two days from the date of service. If necessary, 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: October 4, 2021

Residential Tenancy Branch