



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenants, KO and AF, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants applied for dispute resolution on June 23, 2021. The Notice of Dispute Resolution Proceeding package was sent to the Tenants on July 14, 2021, and they were advised to serve it on the Landlord by July 17, 2021. The Tenants served the Notice of Dispute Resolution Proceeding package by registered mail on July 16, 2021. The Tenants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Dispute Resolution Proceeding package. I find the Notice of Dispute Resolution Proceeding package was duly served on the Landlord pursuant to Section 89(1)(c) of the Act.

Issue to be Decided

Are the Tenants entitled to a cancellation of the One Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this periodic tenancy began on August 15, 2020. Monthly rent is \$1,140.00 payable on the first day of each month. A security deposit of \$570.00 was collected at the start of the tenancy and is still held by the Landlord. Tenant KO confirmed these submissions.

The Landlord personally served a One Month Notice on the Tenants on June 16, 2021. The Tenants confirmed receipt of the One Month Notice.

The Landlord testified that the Tenants have been repeatedly late paying rent. Full rent payment dates follow:

Date Due	Rent Amount	Date Paid in Full
Jan 2021	\$1,140.00	Jan 05, 2021
Feb 2021	\$1,140.00	Feb 11, 2021
Mar 2021	\$1,140.00	Mar 02, 2021
Apr 2021	\$1,140.00	Apr 01, 2021
May 2021	\$1,140.00	May 06, 2021
Jun 2021	\$1,140.00	Jun 08, 2021
Jul 2021	\$1,140.00	Jul 01, 2021
Aug 2021	\$1,140.00	Aug 06, 2021
Sep 2021	\$1,140.00	Sep 06, 2021
Oct 2021	\$1,140.00	Oct 06, 2021

In 2021, rent was on time in April and July. The Landlord issued three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities on August 2, September 2 and October 2.

Tenant AF stated that keeping up with rent payments has been an issue for the Tenants since the Covid-19 pandemic hit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This matter concerns a One Month Notice to End Tenancy for Cause. The Tenants have applied to cancel this One Month Notice.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Landlord applied under Section 47 of the Act as outlined below. S. 47 specifies how a tenancy can end for cause:

- 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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- (b) the tenant is repeatedly late paying rent;
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- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
- (i) has caused or is likely to cause damage to the landlord's property,
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- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
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- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

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The Landlord personally served the Tenants with the One Month Notice on June 16, 2021. The One Month Notice complied in form and content pursuant to Section 52 of the Act. The Tenants confirmed receipt of the One Month Notice. I find that the Tenants were duly served on June 16, 2021 with the One Month Notice pursuant to section 88(a) of the Act.

The Tenants had until June 26, 2021 to dispute the One Month Notice. The Tenants applied for dispute resolution on June 23, 2021. I find that the Tenants applied within the 10 day time limit for dispute resolution.

Residential tenancy policy guideline number 38 provides assistance understanding how late rent payments will be considered. The guideline states:

Three late rent 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.

The Tenants were late paying rent eight months out of the ten months reported. The Landlord did not waive reliance on policy guideline number 38, and issued notices to end tenancy in June, August, September and October. I find that the Landlord has demonstrated that the One Month Notice is justified for these repeatedly late rent payments.

The Tenants' application to cancel the One Month Notice is dismissed without leave to re-apply. Pursuant to Section 55(1) of the Act, the Landlord is entitled to an Order of Possession effective two (2) days after service on the Tenants.

Conclusion

As the Landlord's One Month Notice is upheld, I grant an Order of Possession to the Landlord, which will be effective two (2) day after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 22, 2021

Residential Tenancy Branch