



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 for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

Both parties acknowledged receipt of each other's evidence and were prepared to proceed with the hearing.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Should the tenants fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on April 30, 2019 for a 11 month and 15 day fixed term tenancy beginning on May 15, 2019 that converted to a month to month tenancy on May 1, 2020 for a monthly rent of \$1,395.00 due on the 1st of each month with a security deposit of \$697.00 paid.

The landlord submitted a copy of a Notice of Rent Increase effective May 1, 2020 increasing the rent to \$1,431.00 and a number of 10 Day Notices to End Tenancy for Unpaid Rent issued over the course of the tenancy.

Both parties also submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on July 22, 2021 with an effective vacancy date of August 31, 2021 citing the tenant has been repeatedly late paying rent. In the details of cause the landlord wrote:

“In recent times, the tenant has been late in paying rent on several occasions. Multiple 10 Day Notices to End Tenancy for Unpaid Rent were delivered to the tenant, but the tenant continued to be late on paying rent. The tenant was informed that If this behavior continues, he will be served with a One Month Notice to End Tenancy for Cause.

- 1) 10 Day Notice- served 02 July 2019
- 2) 10 Day Notice - served 07 January 2020
- 3) 10 Day Notice - served 09 April 2021
- 4) 10 Day Notice - served 07 June 2021
- 5) 10 Day Notice - served 04 July 2021”

The tenant does not dispute the late payments identified in the One Month Notice . The tenant has submitted a number of personal medical and employment records confirming that he has been dealing with significant medical issues. He stated that he has been working hard at resolving his health issues and has returned work. He testified that since he has been issued the One Month Notice he has consistently paid rent on time, for the months of August, September, October, and November.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

Section 26 of the *Act* states that a tenant must pay rent when the rent is due according to the tenancy agreement unless the tenant has a right conferred under the *Act* that allows them to withhold a rent payment.

Despite the tenant’s health situation, the Act does not provide any authorisation that would allow the tenant to withhold or pay rent later than allowed under the tenancy agreement.

As the tenant does not dispute the late payments of rent as outlined in the One Month Notice and there had been no authority under the Act that would allow the tenant to withhold any payment of rent, I find the landlord has established at least 3 late payments of rent within the last year of the tenancy. Therefore, I find the landlord has cause to end the tenancy pursuant to Section 47 and Policy Guideline #38.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 22, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that 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 *Residential Tenancy Act*.

Dated: November 29, 2021

Residential Tenancy Branch