



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend. The landlord attended the hearing via conference call and provided undisputed affirmed testimony.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord confirmed that she was served with the tenant's notice of hearing package and was aware of the listed issue(s).

At 10 minutes past the start of the scheduled hearing the tenant was still absent. The landlord was advised that as the tenant has not attended the tenant's application was dismissed without leave to reapply. The landlord stated that she wished to end the tenancy based upon the 1 month notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed evidence that on July 1, 2021, the landlord served the tenant with the 1 Month Notice dated June 14, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent.

The details of event state in part:

August 1, 2020 paid January 5, 2020
February 1, 2020 paid February 7, 2020
March 1, 2020 paid March 31, 2020
April 1, 2020 paid May 1, 2020
May 1, 2020 paid May 19, 2020
June 1, 2020 paid July 2, 2020
February 1, 2020 paid February 8, 2021
March 1, 2021 paid March 7, 2021
April 1, 2021 paid April 6, 2021
May 1, 2021 paid May 25, 2021 after multiple text messages.
June 1, 2021 not paid yet as of June 14, 2021

The landlord clarified that the first entry was a clerical error and could be disregarded. The landlord stated that the tenant was repeatedly late paying rent from February 2020 to June 2020 (as listed by the above details). The landlord also clarified that the tenant paid via post dated rent cheques and in January 2021 the tenant provided post dated rent cheques for the 6th day of each month without the consent of the landlord. The landlord stated that she failed to give notice of this unacceptable payment date and deposited the rent after the 6th day of each month since.

Analysis

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

In this case the landlord seeks an order to uphold the 1 month notice dated June 14, 2021. I accept the undisputed affirmed evidence of the landlord that the landlord served the tenant with the 1 month notice dated June 14, 2021 on July 4, 2021 in person. I find that despite the tenant providing written details in the original application for dispute that the 1 month notice was served on July 1, 2021 the notice was properly served. I find that the effective end of tenancy date is corrected to August 31, 2021 and is still valid.

The landlord provided undisputed affirmed evidence that the tenant has been repeatedly late paying rent. The landlord referred to the dates provided on the 1 month notice dated June 14, 2021 and stated that the tenant was late paying rent for the months February, March, April, May and June of 2020 as listed above. The landlord did clarify that the first entry of August 1, 2020 was a clerical error. The landlord also clarified that the February 1, 2020 entry should have been for 2021. The landlord also confirmed that in January 2021 the landlord received from the tenant post dated rent cheques for the 6th day of each month. The landlord stated that she accepted the cheques and deposited them without any notice to the tenant that payment of rent late was not acceptable.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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.

I find based upon the undisputed affirmed evidence of the landlord that the tenant was repeatedly late paying rent for the period February 2020 to June 2020 over a 5 month period.

I also find that the tenant failed to attend, present and make submissions regarding the application to cancel the 1 month notice. The tenant's application was dismissed without leave to reapply.

Pursuant to section 47 (5) despite filing an application for dispute the tenant having received the notice under this section does not make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit. The 1 month notice dated June 14, 2021 is upheld.

As the effective end of tenancy date of the notice has now passed, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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 16, 2021

Residential Tenancy Branch