



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Owner, JW, and the Landlord's Agents, DB and JA, attended the hearing at the appointed date and time. The Tenant, GD, and the Legal Advocate, PL, 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 Landlord personally served the One Month Notice on the Tenant on October 30, 2021. The Tenant confirmed receipt of the One Month Notice. I find the One Month Notice was served on the Tenant on October 30, 2021 pursuant to Section 88(a) of the Act.

The Tenant personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 4, 2021 (the "NoDRP package"). The Landlord's Agent, DB, confirmed receipt of the NoDRP package on November 4, 2021.

DB said he passed the NoDRP package to the Landlord one week later. I find that the Landlord was served with the documents for this hearing on November 4, 2021, in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to recovery of the application filing fee?
3. If the Tenant is not successful, is the Landlord entitled to an Order of Possession for the rental unit?

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.

This periodic tenancy began with another tenant, and Tenant GD became his roommate in August 2015. When the previous tenant left, Tenant GD took over the tenancy agreement. Monthly rent is \$975.00 payable on the first day of each month. The Tenant testified that he paid a security deposit of \$500.00 which he gave to the previous tenant. The Owner, JW, stated that all security deposits are paid into a lump sum account, but he is agreeable to confirm that the Tenant paid \$487.50 towards his security deposit which is a half month's rent. The Landlord still holds this security deposit in trust.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent; however, no further details were provided in the One Month Notice. The effective date of the One Month Notice was November 30, 2021.

The Landlord's Agent JA stated that at the beginning of June, the Tenant was in arrears close to \$5,000.00. He eventually made multiple payments and now owes no arrears for the month of June. The following table sets out the months the Tenant has been late paying his rent since June:

RENT	Rent Owing	Rent Amount Paid	O/S Rent
June 30		\$975.00	-\$975.00
July 2021	\$975.00	\$0.00	\$0.00
August 2021	\$975.00	\$0.00	\$975.00
August 10		\$975.00	\$0.00
September 2021	\$975.00	\$0.00	\$975.00
September 8		\$975.00	\$0.00
October 2021	\$975.00	\$0.00	\$975.00
October 5		\$975.00	\$0.00
November 2021	\$975.00	\$975.00	\$0.00
November 25		\$975.00	-\$975.00
December 2021	\$975.00	\$0.00	\$0.00

The Landlord has served the Tenant with 10 Day Notices for unpaid rent on August 4, 2021 and September 6, 2021, and the Tenant always paid his full rent within the 5 days set out in Section 46(4)(a) of the Act.

The Tenant testified that he had a major shortage of work, so had difficulties keeping up with his rent payments. He said he would phone the Landlord's Agents when he knew he would be late. When in arrears in June 2021, he dedicated himself to clearing the rent arrears. He said now he has reliable income and does not see paying his rent on time as a problem.

The Landlord is seeking an Order of Possession for the rental unit.

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.

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:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

....

(b) *the tenant is repeatedly late paying rent;*

....

(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.*

....

The Landlord personally served the Tenant with the One Month Notice on October 30, 2021. The One Month Notice complied in form and content pursuant to Section 52 of the Act. The Tenant had until November 9, 2021 to dispute the One Month Notice. The Tenant applied for dispute resolution on November 2, 2021. I find that the Tenant applied within the 10 day time limit for dispute resolution.

Residential tenancy policy guideline #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 Landlord submitted that the Tenant was late paying rent at least 4 times this year. Owner JW stated that *'we don't like to evict people, but we are at our rope's end. We can't do business like this. There has been no improvement.'* The Tenant's Legal Advocate submitted that if an Order of Possession is granted to the Landlord, that it be effective at the end of January 2022. The Landlord was agreeable to this timeframe. I find that the Landlord has demonstrated that the One Month Notice is justified for these repeatedly late rent payments.

The Tenant's application to cancel the One Month Notice is dismissed without leave to re-apply. As the Tenant was not successful in his claim, I do not grant him recovery of the application filing fee.

Pursuant to Section 55(1) of the Act, the Landlord's One Month Notice is upheld, and the Landlord is entitled to an Order of Possession which will be effective at 1:00 p.m. on January 31, 2022.

Conclusion

As the Landlord's One Month Notice is upheld, I grant an Order of Possession to the Landlord, which will be effective at 1:00 p.m. on January 31, 2022. 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: January 04, 2022

Residential Tenancy Branch