



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKIMA HOLDINGS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On October 5, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. Both Landlords attended the hearing as well, with A.G. and J.G. attending as agents for the Landlords. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlords with a Notice of Hearing package by hand to the Landlords’ office, but he was not sure when this was done. The Landlords confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were sufficiently served the Tenant’s Notice of Hearing package.

He claimed to have served his evidence to the Landlords’ office in November 2021 sometime, but he was not sure when and he did not have any proof of service. The

Landlords stated that they did not receive any evidence from the Tenant. Based on the testimony from the parties, I am not satisfied that the Tenant likely served his evidence to the Landlords. As such, the Tenant's evidence will be excluded and will not be considered when rendering this Decision.

The Landlords advised that they served their evidence to the Tenant on February 7, 2022 by posting it to the Tenant's door, and he confirmed that he received this. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on February 1, 2016, that rent was currently established at \$1,355.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlords stated that they served the Notice to the Tenant by registered mail on September 27, 2021, and the Tenant clearly received it as he disputed it within the required timeframe. The reason the Landlords served the Notice is because the "Tenant is repeatedly late paying rent."

A.G. advised that the Tenant was served a 10 Day a Notice for Unpaid Rent on December 15, 2020, August 3, 2021, and September 2, 2021. Copies of these notices were submitted as documentary evidence. As well, she testified to additional transactions of the Tenant's late e-transfers of rent for April, May, June, and July 2021. Landlord I.M. also confirmed some of these late payments.

The Tenant acknowledged that he did not pay rent on time for August or September 2021; however, he was unsure of what happened with December 2020 or April 2021 rent. He advised that he would ordinarily attempt to pay rent, but sometimes this was out of his hands due to issues with the bank's hours or banking system. As well, he stated that he did not realize that not paying rent on time could jeopardize his tenancy.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

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.

When reviewing the Landlords' One Month Notice to End Tenancy for Cause, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

I find it important to note that Landlords may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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;

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby the Landlords 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.

Section 26(1) of the *Act* establishes that “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 undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. The Tenant confirmed that he did not pay August or September 2021 rent on time, and this was consistent with the Landlords’ submissions. Moreover, he attempted to blame bank hours or bank issues for possibly not paying rent on time. These are not valid reasons for not paying the Landlords the rent when it is due.

Given that there is a 10 Day Notice to End Tenancy for Unpaid Rent dated December 15, 2020, I find that this carries more weight than the Tenant’s solemnly affirmed testimony of not being sure whether he paid December 2020 rent on time or not. Based on the lack of evidence from the Tenant, his vague testimony, and his

acknowledgement that he was not aware that he could have jeopardized his tenancy by repeatedly paying rent late, I find that I prefer the Landlords' evidence on the whole.

Based on a balance of probabilities, I am satisfied that the Landlords' testimony and evidence is a more accurate portrayal of this scenario. Consequently, I am satisfied that there is a more likely than not a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Consequently, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on February 28, 2022**.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlords effective at **1:00 PM on February 28, 2022 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 17, 2022

Residential Tenancy Branch