



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNRT, FFT

Introduction and Preliminary Matters

On September 22, 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”), seeking a Monetary Order for compensation pursuant to Section 33 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on February 10, 2022.

The Landlord attended the hearing, with J.A. attending as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 39-minute teleconference. At the outset of the hearing, I informed the parties 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 Landlord advised that the dispute address noted on the Tenant’s Application did not include the “basement” designation, as this was where the Tenant actually resided. As such, the Style of Cause on the first page of this Decision has been amended to reflect this change.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:39 AM. Only the Landlord and his agent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in, and I also confirmed from the teleconference system that the only party who had called into this teleconference was the Landlord and his agent.

As the Tenant did not attend the hearing, her Application has been dismissed without leave to reapply.

J.A. advised that the Landlord's evidence was served to the Tenant by hand on January 30, 2022 and she witnessed this service. Based on this undisputed testimony, as the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties 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 is compliant 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, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order for compensation?
- 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.

The Landlord advised that the tenancy started approximately in September of 2015 or 2016. Rent was currently established at \$950.00 per month and was due on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$100.00, he believes, were also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

J.A. advised that the Notice was served to the Tenant by hand on September 12, 2021 and she witnessed the Tenant receive this. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The Notice indicated that the effective end date of the tenancy was October 10, 2021. However, it should be noted that this incorrect effective date would automatically self-correct to October 31, 2021.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided from the Landlord as it is essential to the matter at hand. A copy of this Notice was provided by the Landlord during the hearing.

The Landlord testified that the Tenant has been late paying rent almost every month. She would generally pay rent in cash, for which he would provide her with receipts, but she would occasionally also pay by e-transfer. He advised that most recently, for the purposes of this Notice, the Tenant did not pay rent for July, August, or September 2021 and she has not paid any rent since then.

J.A. advised that the Tenant was instructed in June 2021 to pay the rent to an agent of the Landlord, whom the Tenant was familiar with, as the Landlord was in the hospital. She testified that the Tenant paid an agent of the Landlord June 2021 rent on July 23, 2021. However, the Tenant never paid any rent for July, August, or September 2021, nor has any rent been paid since. They referenced their documentary evidence submitted to support their position.

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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. While the Notice does not indicate the "basement" as the Tenant's, or the dispute address, I am satisfied that the Tenant would have reasonably known that the Notice applied to her at the dispute address. As such, I have amended the Notice pursuant to Section 68 of the *Act* to correct the dispute address. In reviewing this Notice, 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 Landlord 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 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.

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 Tenant is required to pay all of the rent by the first day of each month and that the Tenant has not only been repeatedly late paying rent in the past, but did not pay rent at all in the three months preceding service of the Notice. As such, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of this Notice.

Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. Regardless of this, the Tenant’s Application was dismissed in its entirety as well. As such, for multiple reasons, an Order of Possession is granted that takes effect **two days** after service on the Tenant.

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

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises 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 10, 2022

Residential Tenancy Branch