



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding **LEDCO ENTERPRISES LTD**
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, MNDCT, FFT

Introduction

On October 12, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 27, 2021, the Tenant Amended her Application seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act* and seeking to increase the Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with T.L., who she alleged was her co-tenant. G.L. attended the hearing as an agent for the Landlord, with H.D. attending as counsel for the Landlord. 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, with the exception of H.D., provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail on or around October 12, 2021. As well, she stated that she served the

Landlord with her Amendment and evidence package by registered mail on October 27, 2021. G.L. confirmed receipt of all of these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Tenant's Notice of Hearing, Amendment, and evidence package. As such, the Tenant's evidence will be accepted and will be considered when rendering this Decision.

H.D. advised that he served the Tenant with the Landlord's evidence by email on February 14, 2021. While the Landlord received the Tenant's Notice of Hearing package in October 2021, H.D. could not explain why he waited until the last possible moment to serve this evidence, other than that he was busy. He submitted that he "assumed" that he complied with the Rules of Procedure for service of evidence; however, he conceded that there were also deeming provisions for documents served by email that were not considered.

The Tenant confirmed that she received this evidence on February 14, 2021 by email and that she purposely chose not to review these documents as it was her belief that the Landlord's counsel "mis-represented" himself. However, she stated that T.L. did review these documents.

Given the undisputed testimony that the Tenant received these documents on February 14, 2021, I am satisfied that these were served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. The Tenant had an opportunity to review this evidence, yet she intentionally elected not to. As I am satisfied that the Tenant received this evidence, I have accepted this evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the notices to end tenancy; however, the parties confirmed that a Two Month Notice to End Tenancy for Landlord's Use of Property was never served to the Tenant. As the only notice to end tenancy served to the Tenant was a One Month Notice to End Tenancy for Cause (the "Notice"), the parties were advised that this will be the main issue that would be considered, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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, is the Landlord 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 most current tenancy agreement started on August 1, 2017, that rent was currently established at \$1,918.00 per month, and that it was due on the first day of each month. A security deposit of \$800.00 was also paid, although the Tenant disputed this amount. Regardless, this was not pertinent to the issues before me. For some reason, only a partial copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant by registered mail on October 13, 2021. The Tenant clearly received it as she amended her Application to dispute the Notice within the required timeframe. The reasons the Landlord served the Notice are because the “Tenant has allowed an unreasonable number of occupants in the unit/site/property/park” and the “Tenant is repeatedly late paying rent.”

After struggling to sort through his own documentary evidence package to make clear submissions with respect to the issue of repeated late payments of rent, it was determined that the crux of D.H.'s arguments was that the Tenant paid rent for May, June, and August 2021 late. Documentary evidence was submitted to support the late payments of May and June 2021 rent, as well as other late payments prior to this. While it was not submitted as documentary evidence, G.L. read from an electronic transfer from the Tenant, dated August 4, 2021, for payment of August 2021 rent.

The Tenant acknowledged that she paid rent for May, June, and August 2021 late. She stated that she sometimes paid rent early; however, she cited difficulties obtaining work due to the COVID pandemic as the explanation for the late payments of rent.

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 Landlord's One Month Notice to End Tenancy for Cause, while the Tenant claimed that the Landlord altered the Notice and she was confused as to what type of Notice this was, there is no provision in the *Act* which would preclude the Landlord from extending the effective date of the Notice. Clearly the type of notice was outlined in the title at the top of the page, and the reasons for why it was served were contained on the second page. In addition, I note that the Tenant amended her Application specifically to dispute this type of notice. As such, 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;

(c) there are an unreasonable number of occupants in a rental unit;

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 day of each month. The Tenant confirmed that she did not pay May, June, or August 2021 rent on time, and this was consistent with the Landlord’s submissions.

Based on this undisputed evidence, I am satisfied that there is 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 Landlord is 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 her claims, 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 Landlord 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.

The Tenant's other claims on her Application are dismissed with leave to reapply.

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 22, 2022

Residential Tenancy Branch