



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order in relation to a disputed rent increase - Section 43.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence and that no recording devices are being used.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim in relation to a rent increase is not related to the matter of whether the tenancy will end for late rent payments, I dismiss the claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on January 1, 2017. The tenancy agreement provides that rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. On November 15, 2021 the Tenant was given a one month notice to end tenancy for cause dated November 15, 2021 (the "Notice"). The Notice sets out one reason: repeat late rent.

The Landlord states that the Tenant has been repeatedly late paying rents and has amassed rental arrears, a portion of which remain outstanding as of this month. The Landlord states that the Tenant has been making additional rent payments for the rental arrears. The Landlord states that in the six months specifically leading up to the Notice, the Tenant paid rent of \$900.00 late as follows:

- June 2021 rent paid on June 5, 2021;
- August 2021 rent paid on August 15, 2021;
- September 2021 no rent paid;
- October 2021 rent paid on October 5 and 7, 2021.

The Tenant agrees that rents have been paid late. The Tenant states that they do not know when rent was paid for August and that they are not sure when rents were paid for September and October 2021. The Tenant states that they were once told they could pay rent late. The Tenant states that sometime around June 2020 the Landlord informed the Tenant that they could pay rent late as long as it was paid by the 8th day of each month. The Tenant states that this was a verbal agreement, and that the Tenant has no supporting evidence of this agreement.

The Landlord states that no agreement was made for the late rent payments. The Landlord states that since serving the Notice the Tenant has made rent payments on

time. The Landlord states that they want an order of possession effective April 15, 2022 and that the Landlord will only seek payment of half the rent for April 2022.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. A written agreement may not be amended by oral evidence alone. Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. As the Tenant has not provided any supporting evidence of a change of the date that rent is due, I find on a balance of probabilities that the Tenant has not substantiated that the tenancy agreement was amended to allow rents to be paid by the 8th day of each month. Given the Landlord's undisputed evidence of more than three late rent payments within the six months prior to the service of the Notice, I find on a balance of probabilities that the Landlord has substantiated that the Tenant has repeatedly paid rent late. For this reason, I find that the Notice is valid, and I dismiss the Tenant's claim to cancel the Notice.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act in relation to form and content provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

As the Notice complies in form and content and has been found to be valid for its stated reason, I find that the Landlord must be given an order of possession.

Conclusion

I grant an Order of Possession to the Landlord effective April 15, 2022. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the 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 Act.

Dated: March 14, 2022

Residential Tenancy Branch