



Dispute Resolution Services

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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 Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord stated she personally served the One Month Notice on November 30, 2021. The Landlord did not provide proof of service of the One Month Notice; although, the Tenant applied for dispute resolution on December 10, 2021. On the dispute notice the Tenant stated the delivery date of the One Month Notice was November 30, 2021, and that it was delivered in person. I find the Tenant was served with the One Month Notice according to Section 88(a) of the Act.

The Landlord testified that the Tenant personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on December 15 or 16, 2021 (the “NoDRP package”). I find that the Landlord was served with the NoDRP package for this hearing on December 16, 2021, in accordance with Section 89(1)(a) of the Act.

The Landlord served her evidence on the Tenant by Canada Post registered mail on March 9, 2022. The Landlord referred me to the Canada Post registered mail tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was served with the Landlord’s evidence on March 14, 2022 in accordance with Sections 88(c) and 90(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?

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.

The Landlord confirmed that this periodic tenancy began on June 15, 2020. Monthly rent is \$1,150.00 payable on the first day of each month. A security deposit of \$575.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was December 31, 2021.

The Landlord provided their lease ledger in documentary evidence which shows that since October 2020, the Tenant has been late paying their monthly rent 15 times. As of December 2021, the Tenant has not paid any rent to date.

The Landlord is seeking an Order of Possession for repeatedly late rent payments.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Section 26(1) of the Act states 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.

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;*

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received,*
and

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (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.*

...

RTB Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. It states:

...

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

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant has been late paying rent 15 times in the last 18 months. The Tenant's late rent payments or partial rent payments are repeated and the Landlord is warranted in serving the One Month Notice. Since November 2021, the Tenant has not paid any rent, but the Landlord has not applied for a monetary order to recover this unpaid rent. I find

that the Tenant has been late over the requisite number of times to constitute being repeatedly late paying rent. The Landlord has proven their claim on a balance of probabilities, and I uphold their One Month Notice. As the Tenant did not attend the hearing to provide evidence why they sought to cancel the One Month Notice, the Tenant's application to cancel the Landlord's One Month Notice is dismissed in its entirety without leave to re-apply.

As the Tenant's application is unsuccessful, Section 55 of the Act specifies how the Landlord is entitled to an Order of Possession:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act. As I have dismissed the Tenant's application and upheld the Landlord's One Month Notice, I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

This dispute resolution hearing dealt with only the Tenant's application to cancel the Landlord's One Month Notice. The Landlord has not applied for a monetary order to recover the unpaid rent, but the Landlord is free to apply for whatever future relief that follows since this tenancy has ended.

Conclusion

The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon

as possible. Should the Tenant fail to comply with this Order, this Order may be filed 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: March 28, 2022

Residential Tenancy Branch