



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC MNRT MNDCT

Introduction

This hearing was conducted in response to the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated November 12, 2021 (1 Month Notice), for a monetary claim of \$12,090.00 for money owed for compensation or damage under the Act, regulation or tenancy agreement and for the cost of emergency repairs. The filing fee was waived.

The tenant, a support person for the tenant, RD (tenant support), the landlord, counsel for the landlord, SK (counsel) and a support person for the landlord, CS (landlord support) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The participants were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had had the opportunity to review the documentary evidence served on them by the other party, I find there are no service issues.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB

Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Pursuant to section 64(3)(c) of the Act, I have changed the landlord's agent to agent versus landlord as the landlord is already named on the tenant's application, BG. In addition, the rental unit address was listed incorrectly by the tenant, which was corrected during the hearing by consent of the parties.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply.**

Regarding conduct, although formal cautions were issued against the tenant on several occasions during the hearing, the tenant repeatedly interrupted the landlord and undersigned arbitrator to the point where they were almost muted. The tenant's behaviour is noted in this decision due to the tenant's non-compliance with my cautions to cease interrupting both the landlord and the arbitrator.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If no, is the landlord entitled to an order of possession under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy agreement began on May 1, 2021. Monthly rent of \$2,800.00 was due on the first day of each month. The tenant paid a security deposit of \$1,400.00.

The tenant confirmed that they did not provide a copy of the 1 Month Notice in evidence as they did not think it was required. The tenant was advised that I could not think of a

more important document than the 1 Month Notice the tenant is requesting that I cancel. The tenant testified that they lost the 1 Month Notice and then stated later that they found the 1 Month Notice, which turned out to be a 10 Day Notice and not the 1 Month Notice after all.

The landlord was given an opportunity to find the 1 Month Notice and first found a 10 Day Notice also, and then within the 5-minute timeframe provided to locate the 1 Month Notice, the landlord found a copy of the 1 Month Notice. The parties agreed that the 1 Month Notice included the following information:

1. It was dated November 12, 2021.
2. It was signed and dated by the landlord agent, NS (agent).
3. The effective vacancy date listed was December 31, 2021.
4. There were 2 causes listed, A) Tenant is repeatedly late payment rent, and B) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
5. The details of cause indicate that August, October and November 2021 rent were late, and that the tenant had a dog in the rental unit, which was a breach of a material term of the tenancy.

The parties were advised that I would first consider the repeated late payment of rent cause. The tenant applied to dispute the 1 Month Notice on November 22, 2021, which is within the 15-day timeline to dispute a 1 Month Notice.

The landlord testified that August 2021 rent was late after the post-dated cheque was returned from the bank. The landlord provided a banking statement which supports that the tenant's cheque of \$2,710.00 (which was \$90.00 short) was deposited on August 2, 2021 and was returned on August 5, 2021. The tenant stated that they withheld \$90.00 due to a shower issue and confirmed that they did not have an order from an arbitrator authorization the \$90.00 deduction from August 2021 rent. The e-transfer from the tenant was August 6 or 7, 2021. Although the tenant claims the landlord delayed depositing the August 2021 rent cheque, the landlord's bank statement and testimony refutes the tenant's testimony.

The landlord then testified that October 2021 rent was also late due to the post-dated cheque being deposited on October 1, 2021 and was returned on October 5, 2021. The tenant confirmed they placed a stop-payment on the October 2021 rent cheque. The parties confirmed that rent was paid via two e-transfers, October 7, 2021 of \$1,800.00 then another \$1,000.00 on October 11, 2021. The tenant claims that they were

negotiating the end of tenancy in October 2021 so did not pay the rent as a result of that negotiation. A Mutual Agreement to End a Tenancy (Mutual Agreement) was submitted in evidence, which I find is null and void and is not enforceable as the tenant signed stating “Signing Under Extreme Duress” and “Signing under Threat and Harassment, Harm & Threat of more loss of quiet & peaceful enjoyment of tenancy” and that by adding those words, I find the Mutual Agreement is not enforceable, which means no compensation is required for the tenant for a free month of rent.

The landlord testified that for November 2021 rent, the landlord deposited the rent cheque on November 2, 2021, and on November 4, 2021, the rent cheque was returned in addition to a \$7.50 fee from the bank for the returned cheque. The tenant again admitted that they cancelled the November 2021 rent cheque.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. I find the testimony of the tenant and the landlord support that 3 late payments occurred as of August 2, 2021, October 2, 2021, and November 2, 2021, as monthly rent is due on the first day of each month. Therefore, I find it was not necessary to consider late payments beyond November 2021 and find the 1 Month Notice was valid and complies with section 52 of the Act. Furthermore, I find it was not necessary to consider the second cause listed on the 1 Month Notice as the landlord succeeded in proving the first cause. Therefore, I **dismiss** the tenant’s application to cancel the 1 Month Notice and I uphold the landlord’s 1 Month Notice, with an effective vacancy date of December 31, 2021. Section 55(1) of the Act applies and states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if**

- (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.**

[emphasis added]

Given the above, **I must grant** the landlord an order of possession pursuant to section 55 of the Act **effective March 31, 2022 at 1:00 p.m.** I have used this date and time as the landlord has confirmed that money has been paid for use and occupancy for March 2022. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on December 31, 2021, which was the effective vacancy date listed on the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed without leave to reapply. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective March 31, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenant is cautioned that if they fail to vacate the rental unit as required, they can be held liable for all costs related to enforcing the order of possession.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 14, 2022

Residential Tenancy Branch