



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Visio Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, OPC, OPM, MNRL-S, FFI
Tenants: CNC

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The tenants sought to cancel a notice to end tenancy. The landlord sought an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 2, 2022 in accordance with Section 89. The landlord confirmed that on March 11, 2022 they received the hearing packages as returned from Canada Post marked as unclaimed.

The landlord testified that after they received the packages back they served each of the tenants with their respective packages in person at the rental unit and that this services was witnessed by a third party.

Based on the undisputed testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, I note that the original hearing was scheduled as a result of the tenant's Application seeking to cancel the One Month Notice to End Tenancy for Cause. As such, I am satisfied that the tenants were aware of this hearing and had the call in information well ahead of the landlord's application.

I note that because port of this claim is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

It must also be decided if the landlord is entitled to an order of possession for unpaid rent; for cause; or for a mutual agreement between the parties to end the tenancy; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 46, 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by both parties on November 7, 2019 for a fixed term tenancy beginning on November 8, 2019 that converted to a month to month tenancy on November 1, 2020 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 and a pet damage deposit of \$700.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 10, 2021 with an effective vacancy date of November 30, 2021 citing the tenant had failed to pay rent in the amount of \$700.00 due on November 1, 2021;
- A copy of a One Month Notice to End Tenancy for Cause issued on December 2, 2021 with an effective vacancy date of January 7, 2022 citing the tenants were repeatedly late paying rent; and
- A Mutual Agreement to End a Tenancy signed by the parties for an effective vacancy date of January 17, 2022.

The landlord testified the tenants remain in the rental unit; that they have paid rent on all of the following months: March, April, May and November 2021; and that the tenants currently have not been paying any rent at all and have a total arrears of \$3,200.00. The landlord provided a copy of a tenant ledger confirming this outstanding amount.

The tenants' Application for Dispute Resolution states they received the One Month Notice to End Tenancy on December 23, 2021. The landlord's documentary evidence confirms they served it to the tenants on December 3, 2021.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

From the undisputed evidence provided by the landlord, I accept that the tenants were late on at least 3 occasions prior to the issuance of the One Month Notice to End Tenancy for Cause.

I also accept the landlord's undisputed submissions and the fact that the tenants submitted an Application for Dispute Resolution seeking to cancel the One Month Notice where they indicated they received the Notice on December 23, 2021.

In addition, based on the undisputed testimony and documentary evidence of the landlord I find the landlord has established the tenants owe rental arrears in the amount of \$3,200.00.

As I have determined the tenancy must end as a result of the One Month Notice – I dismiss the other portions of the landlord's claim, specifically, seeking an order of possession for unpaid rent and for the mutual agreement to end tenancy.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,300.00** comprised of \$3,200.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,600.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also note the landlord still holds a pet damage deposit in the amount of \$700.00 that will need to be dispensed in accordance with any requirements set forth in the *Act* at the end of the tenancy.

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: March 28, 2022

Residential Tenancy Branch