



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNC, LRE**
 LL: OPC, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (Tenants’ Application”) for:

- cancellation of a One Month Notice to End Tenancy for Cause dated December 3, 2021 (“1 Month Notice”) pursuant to section 47; and
- an order to suspend or set conditions on the Landlords’ right to enter the rental unit.

The Landlords made one application (“Landlords’ Application”) for:

- an Order of Possession pursuant to sections 47 and 55; and
- authorization to recover the fling fee from the Tenants pursuant to section 72.

The two Tenants (“DW” and “LD”) and the two Landlords (“SL” and “ML”) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

LD stated the Tenants served their Notice of Dispute Resolution Proceeding (“Tenants’ NDRP”) on the Landlords on December 20, 2021. SL acknowledged the Landlords received the Tenants’ NDRP from the Tenants. I find the Tenants’ NDRP was served in accordance with section 89 of the Act.

SL stated the Landlords served their Notice of Dispute Resolution Proceeding and their evidence (“Landlords’ NDRP Package”) on DW in-person on March 6, 2022. Although the Landlords did not serve each of the Tenants with the Landlords’ NDRP Package, LD attended the hearing. Accordingly, I find that DW was served with the Landlords’ NDRP

Package in accordance with section 89 of the Act and LD was sufficiently served with the Landlords' NDRP Package pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claim

The Tenants' Application included a claim for an order suspending or setting conditions on the Landlords' right to enter the rental unit. Rule 2.3 of the RoP states:

2.3 Related issues Claims made in the application must be related to each other.

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. Based on the above, I sever and dismiss the Tenant's claim for an order suspending or setting conditions on the Landlords' right to enter the rental unit. If I dismiss the Tenants' application, then I will dismiss that claim without leave to reapply.

Issues to be Decided

Are the Tenants entitled to:

- cancellation of the 1 Month Notice?

Are the Landlords entitled to:

- an Order of Possession?
- recovery of the filing fee of the Landlords' Application from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The

principal aspects of the Tenants' and Landlords' Applications and my findings are set out below.

The parties agreed the tenancy commenced on May 26, 2018, for a one-year fixed term and then continued on a month-to-month basis. The Tenants are required to pay rent of \$1,500.00 on the 1st day of each month. The Tenants paid a security deposit of \$750.00 which the Landlord is holding in trust for the Tenants. SL stated the rent has been paid until April 30, 2022.

SL stated that 1 Month Notice was served by the Landlord on DW in-person on December 3, 2021. The 1 Month Notice stated that following causes for ending the tenancy:

1. Tenant is repeatedly late paying rent;
2. Tenant has not done required repairs of damage to the rental unit/property/park;
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
4. Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The details of the events for the causes set out in the 1 Month Notice are:

Tenant late paying three of the last four months, and late rent payments prior as well. Gave tenant a demand letter on October 31st, 2021, to pay utilities that was due on October 1st 2021, now paid. Gave tenant another demand letter dated November 10th, 2021, to replace the badly broken new closet door, that we noticed during home inspection November 8th 2019. It is always today, tomorrow, will be replaced but still nothing done yet. Tenant now goes he will do it January, February 2022, as per his text message dated December 2nd 2021. Tenant finally accepted that the two cats are theirs and we agreed a payment plan of \$50.00 a month starting October 1st 2021, but not paid a penny towards the pet deposit. Written warning given June 3rd 2018 for excessive noise/ police called April 14th 2021 tenants [sic] would not allow us into the house for home inspection even though one week written notice was given and threatened us that they will call RCMP or Arbitration, if we entered the house. It is time for us to have an order of possession.

SL Landlord testified the Tenants were late paying the rent for September, October and December 2021. SL stated the Tenants had been late paying the rent for earlier dates as well but did not provide testimony or evidence on those earlier dates. SL submitted copies of texts between her and the Tenants. In a text message dated August 31, 2021, TD advised SL that the “new job is going well”. In a subsequent text message dated October 29, 2021, TD advised SL “Water will be paid ASAP and the late payment on November’s rent, pet shit should be the 20th! ... Just been a struggle, job I got had a massive lay off and I was at the bottom and got the axe, thankfully my EI payments were reinstated or we be screwed. ...”. SL also submitted copies of the Landlord’s bank records showing the amounts and dates of the e-transfers the Tenants made for rent to corroborate her evidence the Tenants had paid the rent late for the months of September, October and December.

DW admitted the Tenants were late paying the rent for September, October and December 2021. DW did not provide any testimony or evidence that the late payments were the result of bank errors or some other exceptional circumstances. DW stated that, if the Landlords were granted an Order of Possession, the Tenants would refuse to move out because there was nothing to rent in Chilliwack.

Analysis

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The Act stipulates a set of limited circumstances in which monies claimed by a tenant may be deducted from rent, which include:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

The Act is unequivocal that the obligation to pay rent rests solely with the Tenants. The Tenants did not provide any testimony or evidence that they were excused from paying for the rent on the basis of one of the foregoing reasons.

As such, the Tenants were responsible for paying rent when it was due. Subsections 47(1)(b) and sections 47(2) through 47(4) state:

- 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.

[emphasis in italics added]

The Landlords served the 1 Month Notice on DW in-person on December 3, 2021. Pursuant to section 47(4), the Tenants had until December 13, 2021 to make their application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch disclose the Tenants made their application on December 13, 2021. Based on the above, the Tenants made their application within the time frame provided by section 47(4).

Residential Tenancy Branch Policy Guideline 38 (“PG 38”) provides guidance on when a landlord may end a tenancy where the tenant is repeatedly late paying rent. PG 13 states in part:

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.

I find the Tenants were late paying the rent for September, October and December 2021. As such, the Tenants were late paying the rent three months out of a four-month period. I find the Landlords took immediate steps to serve the 1 Month Notice on the Tenants, being the second day following the failure of the Tenants to pay the rent on December 1, 2021. DW admitted the Tenants were late paying the rent in full on the 1st day of each of September, October and December 2021. The Tenants did not testify to, or provide any evidence that an event, such as a bank error led to one or more late payments or some other exceptional circumstance, resulted in the late receipt by the Landlords of one or more of the Tenants’ rental payments. Financial hardship, such as loss of employment, is not an exceptional circumstance.

I find the Landlords have demonstrated that, on a balance of probabilities, they had cause to end the tenancy pursuant to section 47(1)(b) of the Act. Based on the above, I dismiss the Tenants’ Application in its entirety.

Sections 55(1) and 55(1.1) of the Act state:

- 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.
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the 1 Month Notice and find that it complies with the form and content requirements of section 55 of the Act. As such, I find the 1 Month Notice is valid. As I have dismissed the Tenants' Application, I must grant the Landlord an Order of Possession of the rental unit pursuant to section 55(1) of the Act. Although the 1 Month Notice stated the effective date for the Tenants' to move out of the rental unit was January 31, 2022, the Tenants have not vacated the rental unit. The Tenants have paid the rent until April 30, 2022. Pursuant to section 68(2)(a) of the Act, I order the tenancy ends on at 1:00 pm on April 30, 2021, after service of the Order of Possession on the Tenants.

As the Landlords' Application has been successful, I order the Tenants pay the Landlords \$100.00 for the filing fee of their application. Pursuant to section 72(2)(b) of the Act, the Landlords may deduct the \$100.00 from the Tenants' security deposit of \$750.00. The Landlords must handle the remaining \$650.00 of the Tenants' deposit in accordance with the requirements of the Act.

Conclusion

The Tenants' Application is dismissed in its entirety.

The Landlords are provided with an Order of Possession effective on April 30, 2022. This Order must be served by the Landlords on the Tenants as soon as possible upon

receipt from the Residential Tenancy Branch. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are authorized to deduct \$100.00 from the Tenants' security deposit to cover the filing fee of the Landlords' application.

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 30, 2022

Residential Tenancy Branch