



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 an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and

Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference connection open until 11:10 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m. 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 attended the hearing accompanied by an agent, MM. The landlord acknowledged being served with the tenant’s application for dispute resolution and stated she had no issues with timely service of documents. The landlord testified she served her evidence to the tenant by posting it to the tenant’s door on March 29, 2022 at 2:27 p.m.

The hearing of the tenant’s application took place in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The tenancy began on April 1, 2016 with rent set at \$1,170.00 payable on the first day of each month. Rent is currently set at \$1,375.57, still payable on the first day of each month.

The landlord testified she served the tenant with a 1 Month Notice to End Tenancy for Cause on January 5, 2022 by sending a copy via registered mail. The tracking number is recorded on the cover page of this decision. A copy of the notice to end tenancy was provided as evidence. The reason cited for ending the tenancy on the notice reads: Tenant is repeatedly late paying rent.

Under “details of cause” the landlord wrote:

The tenant is repeatedly late paying rent as follows:

August 2, 2020, Sept. 3, 2020, Jan 4, 2021, May 3, 2021 and Jan 4, 2022.

The landlord testified the tenant pays his rent by direct deposit which goes directly into the landlord’s account immediately without the landlord having to accept the transfer. The landlord provided an E-transfer history from her bank showing when each of her tenants paid rent for reference, as well as a statement describing which payments were late as evidence.

The landlord testified that the tenant is still occupying the rental unit.

Analysis

The tenant is deemed served with the 1 Month Notice to End Tenancy for Cause on January 10, 2022, five days after January 5, 2022, the day it was sent by registered mail pursuant to sections 88 and 90 of the Act. The tenant filed his application to dispute the notice on January 14, 2022 within the 10 days as prescribed under section 47 of the Act.

Rule 6.6 of the Act states that the landlord bears the onus to prove the reasons stated on the notice to end tenancy are valid when a tenant disputes it. The tenant did not attend the hearing to present any evidence or provide testimony to refute any of the landlord’s undisputed evidence.

Section 26(1) of the *Act* clearly sets out the rules about payment and non-payment of rent. 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. Section

47(1)(b) of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline PG-38 indicates **three late payments** are the minimum number of times sufficient to justify a notice under section 47.

I have reviewed the E-transfer history provided by the landlord's bank and I am satisfied the tenant was late in paying rent on seven separate occasions between September 1, 2020, and January 4, 2022. Seven late payments are sufficient to prove to me that the tenant is repeatedly late paying rent and I find the landlord is entitled to end this tenancy pursuant to section 47(1)(b).

Section 55 states 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.

I find that the landlord's notice to end tenancy complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. During the hearing, the landlord testified that the tenant has paid rent until the end of April and that if she were to be granted an Order of Possession that it be made effective the last day of April. Given the landlord's request, I grant the landlord an Order of Possession effective at 1:00 p.m. on April 30, 2022.

As the tenant's application was unsuccessful, the tenant's application to recover the filing fee is also dismissed.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on April 30, 2022**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: April 12, 2022