



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Victoria Native Friendship Centre
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR, CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent dated February 1, 2022 ("10 Day Notice"); for an Order cancelling a One Month Notice to End Tenancy for Cause dated February 7, 2022 ("One Month Notice"); and to recover the \$100.00 cost of her Application filing fee.

The Tenant, M.Y., her counsel, S.N. ("Counsel"), and two agents for the Landlord, A.M. and K.C. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I note that the Tenant's co-tenant also has the initials "S.N.". As such, my reference to these initials from here on is meant to mean the co-tenant, not Counsel.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written 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.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they did not receive any evidence from the Tenant. Counsel said that they are not relying on the evidence, although he noted that the Landlord had submitted a copy of the tenancy agreement and addendum, on which the Tenant intends to rely. I explained to the Tenant and Counsel that Parties need to serve all the evidence on which they intend to

rely, so that the other Party can prepare for the hearing in advance. Accordingly, I will not be considering the Tenant's submissions regarding the tenancy agreement or addendum, because the Landlord was not advised of this evidence through service of this evidence prior to the hearing. The Tenant acknowledged receipt of the Landlord's evidence. I find that the Landlord's evidence is before me for consideration in this proceeding.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence, which is before me, to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 30, 2021, with a monthly rent of \$870.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$435.00, and no pet damage deposit. I note that the Tenant – the Applicant before me – has a tenancy agreement in which her co-tenant, S.N., is also named as a tenant for this tenancy.

The 10 Day Notice was signed and dated February 1, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on February 2, 2022, with an effective vacancy date of February 12, 2022, which is automatically corrected by the Act to February 15, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$870.00 when it was due on February 1, 2022.

The One Month Notice was signed and dated February 7, 2022, it has the rental unit address, and it was served by posting it to the door of the rental unit on February 7, 2022. The One Month Notice has an effective vacancy date of March 31, 2022, and it was served on the grounds that the Tenant has allowed an unreasonable number of occupants in the unit/property; and that the Tenant is repeatedly late paying rent; and that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In the "Details of Event(s)" section of the One Month Notice, the Landlord wrote:

-RTB-30 10 Day Notice to End Tenancy for Unpaid Rent or Utilities posted:
August 4, 2021

-RTB-30 10 Day Notice to End Tenancy for Unpaid Rent or Utilities posted:
November 2, 2021;

-RTB-30 10 Day Notice to End Tenancy for Unpaid Rent or Utilities posted:
February 2, 2022.

-September 8, 2021, Property Management received three separate formal complaints.

1. A male guest was buzzing into your unit between 2-3am and buzzed multiple units trying to gain access. Convinced the security guard to let him in.
2. Loudly talking outside in the middle of the night (in hallways and stairwells)
3. Loudly coming and going from your unit in the middle of the night (in the hallways and stairwells)

-October 18, 2021 Multiple formal complaints to Property management over the weekend regarding your unit and your guests. A fire extinguisher was set off and the pin found outside your door.

[reproduced as written]

As the burden of proof is on a landlord to prove the validity of eviction notices, I started by asking the Agents why I should confirm the notices and give the Landlord an order of possession of the rental unit. The Agents said:

The tenants are jointly severally responsible for meeting terms of tenancy agreement. They are co-tenants in the unit. When one moves out, we have to end that tenancy and a new tenancy is started. When a tenant has repeated late

rent, we have to sever them with notice. This is a non-profit organization. Having one person in a 2 bedroom unit is over-housed.

It's both [M.Y.] and [S.N.] as co-tenants. And it's three unpaid rents on rent day: August 4, [2021], they paid the rent within the 5 day period of time; November 2, [2021], they paid within the five days, and on February 2, the third notice was served and that rent went unpaid. Following the third late or non-payment of rent, tenants are issued notices following the law that governs. The February rent was paid within the five days of the 10 day notice.

The Tenant replied, as follows:

When we signed the tenancy agreement, and they had separated the payment for us, saying each of us owed \$435.00 or whatever - separate amounts. In person when I asked to pay rent for him, they said I was not allowed to, because [S.N.] had to pay it. A few times I've had to pay his rent. Before he vacated. Also, they didn't address my concerns – I requested to change roommates, and that was denied.

Counsel added:

Our main issue is that we don't feel that the complaints have risen to the level of cause to terminate the lease, and it's more of a technical argument based on the tenancy agreement and the addendum.

In order for us to prove or say why the One Month Notice has not met its threshold we would need to discuss the 10 Day Notices.

We have three main claims – first, to dispute the 10 Day Notice issued for unpaid rent; the second reason is that in disputing the One Month Notice for cause, our argument is that there is no cause. There has not been three 10 Day Notices to end validly that it has risen to the issue of cause.

The February 2 notice is focused on, but it will apply to all three [10-Day] notices. There is a technical argument – a discrepancy between what was agreed to in the tenancy agreement and addendum and what is carried out in practice. The tenancy agreement says rent is due on the first day. Rent must be paid in full and on time by midnight on the day it is due. The Landlord has imposed terms that rent must be paid to the housing office between 8:30 and 4:30 p.m. This is not

reflected in the tenancy agreement, nor in the addendum signed by my client as a co-tenant. She was only provided with on August 4th and November 2nd - only given an 8-hour window to pay rent. They never had the opportunity to pay up to midnight. If rent has to be paid to the housing office between 8:30 a.m. – 4:30 p.m., this changes when rent is due and what constitutes late rent. Anything after 4:30 pm is technically late. This affects every instance of non-payment.

The Agents responded:

We operate within business hours. If rent is paid the first thing the next morning, we don't put notices up until the following day, and they can pay by cheque - pre-dated cheques - but because many people pay with cash, we're not available in the evenings. If they want to give us pre-dated cheques. We are aware that because we are an office Monday to Friday , so if the 1st falls on a weekend, we accommodate a wider rent window. And have stayed late to accept rent payments.

On each situation, the rent that was missing – the half portion missing... back up...[The Tenant] previously held a sole tenancy in single occupancy unit. Prior to being moved into a suite where she became a co-tenant named [S.N.] For each missed payment, [the Tenant's] payment was automatically paid to the [Landlord] by direct deposit. But the half not received was Mr. [S.N.]. On each occasion when [the Tenant] realised that he was not going to make the payment window, it was too late to make it for him.

Counsel said:

[The Tenant's] portion was paid automatically through disability. She has severe anxiety, which really affects a lot of the way she feels about rules and impositions. Communication becomes difficult, but [S.N.] failed to pay rent on February 2nd, and he abandoned the unit by February 12th. It was within the five days of when rent was due that [the Tenant] completed that payment.

The Agents said:

I'd like to clarify some of the language. They are co-tenants, so it is one rent due paid in two portions. [S.N.] has not abandoned the unit from our perspective; the tenancy needs to be ended jointly. Even if abandoned, they have to pay rent on time.

The Tenant said that from February onward, she, solely, has paid the rent. The Agents confirmed that she is not in arrears. They said that the Tenant paid rent when it was due. However, the Agents said the Landlord is not interested in a settlement in this situation. The Agents said that the Tenant was served with a fourth 10 Day Notice in May of this year. They say she is over-housed in that multi-tenant unit, and there are not any other units available.

The Landlord submitted a copy of an email sent to the co-tenants on February 2, 2022, from the Agent, A.M. In this email the Agent said:

Good morning [Tenants],

I'm writing to inform you a 10-Day Notice for Unpaid rent and Utilities has been posted on your door for late rent, this is your third official strike. A 30-Day Notice to End Tenancy will be posted on your door, this is irreversible.

These are the options in front of you:

-10-Day Notice for Unpaid Rent and Utilities posted today, you have 5 calendar days to pay your rent entirely for February. If rent is not paid by **Monday February 7, 2022** you will need to be moved out of our unit [rental unit address] by **Saturday February 12, 2022**.

-If February rent is paid in full before or by Monday February 7, 2022 your tenancy is still active until February 28, 2022 . **However, there will still be a definite 30-Day Notice to End Tenancy in place. I am offering a bit of an extension here to mid-month of March. To be exact you will need to be fully moved out of your unit by Tuesday March 15, 2022 1:00pm.**

. . . .

[emphasis in original]

Analysis

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

Section 26 of the Act sets out that a tenant must pay rent when it is due:

Rules about payment and non-payment of rent

26 (1) 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 of the Act authorizes a landlord to end a tenancy for repeated late payment of 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;

Policy Guideline 38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

However, based on the testimony and documentary submissions before me, I find that the reason for the repeated late payments of rent was that the Applicant's co-tenant was remiss in not paying his portion of the rent on time.

Policy Guideline #13 ("PG #13") "Rights and Responsibilities of Co-tenants" helps clarify the rights and responsibilities relating to multiple tenants renting a rental unit under a single tenancy agreement. PG #13 includes the following:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit.... There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement.

Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

D. DEBTS OR DAMAGES

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.

If a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.

[emphasis added]

The Tenant said that she tried to pay her co-tenant's rent when he was going to be late, but that the Landlord would not allow her to do this. This raises questions in my mind as to why the co-tenants did not work together to pay rent jointly, even if this meant one had to pay more some months – this way, their rent would have been paid on time.

As my authority is limited to the Act, Regulation, and Policy Guidelines, I find that the Landlord has submitted sufficient evidence to support the One Month Notice, as the Tenant paid rent late three times in the six months leading up to the One Month Notice being issued to the Tenant. I find that this behaviour forms the ground to evict the Tenant pursuant to section 47 (1) (b) of the Act. Further, I find that the One Month Notice is consistent with section 52 of the Act, as to form and content.

Accordingly, I award the Landlord with an **Order of Possession pursuant to section 55** of the Act. As the effective vacancy date has passed – even the extended deadline has passed - the Order of Possession will be **effective two days after it is deemed served** to the Tenant.

Given these conclusions, I find it is not necessary to consider the merits of the 10 Day Notices, as the undisputed evidence before me is that the rent was paid late three times prior to the issuance of the One Month Notice. As a result of my findings, and pursuant to section 62 of the Act, the Tenant's Application is dismissed wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to prove the validity of the One Month Notice on a balance of probabilities. The One Month Notice is confirmed. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: May 25, 2022

Residential Tenancy Branch