



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

The Tenants apply for the following relief under the *Residential Tenancy Act* (the “*Act*”):

- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed March 20, 2022 (the “One-Month Notice”).

D.S. and D.S. appeared as the Landlords. The Tenants did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advises that he served the Tenant with the One-Month Notice by posting it to a gate at the rental unit on March 20, 2022. A photograph of the One-Month Notice left at the gate was provided by the Landlord. I find that the Landlord served the One-Month Notice in accordance with s. 88 of the *Act* by leaving it at a conspicuous place at the rental unit. Pursuant to s. 90 of the *Act*, I deem that Tenant’s received the One-Month Notice on March 23, 2022.

The Landlord advises that he served the Tenant with responding evidence by way of registered mail sent on April 28, 2022. I find that the Landlord’s response evidence was

served in accordance with s. 89 by way of registered mail sent on April 28, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord's evidence on May 3, 2022.

The Landlord says that he was not served with any of the Tenants' evidence and only acknowledges receiving the Notice of Dispute Resolution from the Tenants. The Tenants were not present to demonstrate service as required by Rule 3.5 of the Rules of Procedure. The Landlord, however, consented to the inclusion of the One-Month Notice the Tenants provided to the Residential Tenancy Branch as the Landlord failed to include it in his evidence package. I permit its inclusion as the Tenants were the ones who provided it to the Residential Tenancy Branch as part of their evidence. There is no prejudice to the Tenants in permitting the partial inclusion of their evidence based on the Landlord's consent to its inclusion.

Preliminary Issue – Tenants Non-Attendance

The Tenants failed to attend the hearing for their own application. As made clear by Rule 6.6 of the Rules of Procedure, an applicant generally bears the burden of proving their claim, except in circumstances where a tenant applies to cancel a notice to end tenancy, in which case the evidentiary burden rests with the respondent landlord.

There are two aspects to the Tenants' application: a claim to cancel the One-Month Notice and an order under s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

The claim under s. 62 must be proven by the applicant Tenants. As the Tenants' did not attend the hearing, I find that they failed to prove their claim under s. 62 of the *Act*. Accordingly, I dismiss their claim under s. 62 without leave to reapply.

As the burden of showing the One-Month Notice was issued in compliance with the *Act* rest with the Landlord, the hearing proceeded solely on the issue of the Tenants' claim to cancel the One-Month Notice under s. 47 of the *Act*.

Issue(s) to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirms the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on March 1, 2020.
- Rent of \$1,500.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$750.00 and a pet damage deposit of \$250.00 in trust for the Tenants.

The Landlord described how the rental unit is a trailer that he owns and is located on an acreage. He and his wife reside on the acreage adjacent to the subject rental unit.

The Landlord indicates that there have been various issues with the Tenants. The One-Month Notice was issued on the basis that the Tenants are repeatedly late in paying their rent and various aspects related to unreasonable disturbances.

The Landlord indicates that the Tenants failed to pay rent for May 2022 and were late in paying rent for March 2022, February 2022, January 2022, and December 2021. The Landlord provides text message correspondence in his evidence with respect to the late rent payments for the months of March 2022, February 2022, January 2022, and December 2021.

The Landlord further describes various noise complaints from the Tenants, specifically music. The Landlord indicates that these have occurred after 10:00 PM and have prompted the noise complaints, including the attendance by the RCMP on one occasion. The Landlord provides text message correspondence with the Tenant respecting the noise complaints.

The Landlord further advises that there have been two incidents in which the RCMP attended due to alleged physical violence between the Tenants. The Landlord and his wife say that one such incident of March 19, 2022 prompted the issuance of the One-Month Notice.

I am told that other notices to end tenancy have been issued, however, they are not before me.

Analysis

The Tenants apply to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord. Presently, the Landlord issued the One-Month Notice relying on ss. 47(1)(b), 47(1)(d), and 47(1)(e).

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Dealing first with the issue of repeated late rent payments, Policy Guideline #38 provides guidance with respect to when a landlord may end a tenancy for the tenant's repeated late rent payments. It states the following:

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 accept the Landlord's undisputed testimony that the Tenants were late in paying rent for December 2021, January 2022, February 2022, and March 2022. The Landlord provides supporting text messages that verify that the Tenants were late in paying rent for these months. I further accept the Landlord's undisputed testimony that the Tenants failed to pay rent at all for May 2022 and is, therefore, late in paying rent for May 2022.

Having regard to the Landlord's undisputed evidence and Policy Guideline #38, I find that the Landlord has established that the Tenants were repeatedly late in paying their rent and that the One-Month Notice was properly issued under s. 47(1)(b) of the *Act*. As the One-Month Notice is valid on this ground, I dismiss the Tenants' application to cancel the One-Month Notice.

Given my finding with respect to repeated late rent payments and that the One-Month Notice was properly issued under s. 47(1)(b) of the *Act*, I need not consider the other bases upon which the notice was issued.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. Given that I have found that the One-Month Notice complied with s. 52 and have dismissed the Tenants' application to cancel the notice, I grant the Landlord an order for possession. As the effective date in the notice has passed, the order for possession shall be effective two-days after the Tenants receive it.

Conclusion

As the Tenants were not present for their application, I find that they have failed to make out their claim under s. 62 of the *Act* that the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement. I dismiss the Tenants claim under s. 62 of the *Act* without leave to reapply.

The Landlord has established that the One-Month Notice was properly issued based on repeated late payments under s. 47(1)(b) of the *Act*. As the One-Month Notice was issued properly on this ground, I need not consider the other bases upon which the Landlord issued the notice. The Tenants' application to cancel the One-Month Notice is dismissed without leave to reapply.

As the Tenants' application to cancel the One-Month Notice is dismissed and the One-Month Notice complies with s. 52 of the *Act*, the Landlord is entitled to an order for possession. I grant the Landlord an order for possession under s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

It is the Landlord's obligation to serve the order for possession on the Tenants. If the Tenants do not comply with the order for possession, it may be filed by the Landlord with 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 10, 2022

Residential Tenancy Branch