



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FFT

Introduction

This hearing was reconvened in response to an application by the Tenant for orders cancelling two notices to end tenancy pursuant to section 46 and 47 of the *Residential Tenancy Act* (the “Act”).

At the original hearing on February 10, 2022 (the “Original Hearing”) the Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed receipt of the Landlord’s evidence package and the Landlord confirmed receipt of the Tenant’s evidence that consisted of a notice to end tenancy. The Parties agreed that the notice to end tenancy for unpaid rent pursuant to section 46 of the Act was no longer effective as the Tenant paid the outstanding rent within the time allowed. The only matter left for the Original Hearing was the dispute of the notice to end tenancy for cause pursuant to section 47 of the Act. The Original Hearing on this matter was adjourned as the time allotted for the hearing expired.

At this reconvened hearing the Parties, still under oath, were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Parties agree that since the adjourned hearing the Landlord served the Tenant with another one month notice to end tenancy for cause dated February 16, 2022, the

Tenant made an application to dispute this notice pursuant to section 47 of the Act and to recovery the filing fee pursuant to section 72 of the Act. This application has been scheduled for a hearing on June 7, 2022. The file number for this dispute is included on the cover page of this decision. The Parties each request and consent to this dispute being joined and determined at this hearing. The Parties confirm that they each provided their evidence for the June 7, 2022 hearing to the other Party and the Residential Tenancy Branch (the “RTB”) and are prepared to proceed on the matter. Given the Parties mutual request and consent I allow the dispute scheduled for June 7, 2022 to be brought forward and dealt with at this reconvened hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of a notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts:

The tenancy under written agreement started on February 3, 2019. Rent of \$2,943.00 is payable on the first day of each month. The Landlord served the Tenant with a one month notice to end tenancy for cause dated November 27, 2021. This notice sets out an effective date of January 1, 2022 and the following reasons:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice sets out details of noise, disturbances in the common areas and use of a wood burning sauna.

On February 23, 2022 the Tenant received another one month notice to end tenancy for cause dated February 16, 2022 (the "Notice"). The Notice sets out an effective date of April 1, 2022 and sets out one reason: repeat late rent payments. The Notice sets out details that the late rents were paid on September 2 and December 2, 2021 and on January 2 and February 2, 2022. The Tenant provides supporting evidence that those payments were made on those dates as set out on the Notice.

The Tenant states that prior to the first late payment on September 2, 2021 the Tenant had consistently paid rent either the day before or on the day that rent was due. The Tenant states that some of the late payments were only made a few hours late in the early hours of the morning after rent was due. The Tenant states that the pandemic and the Tenant's financial difficulties were factors in the late payments. The Tenant argues that given the past history of consistent payments it would be unfair for the tenancy to end because of the recent late payments. The Landlord states that after the second late payment the Tenant had been given a 10-day notice to end tenancy for unpaid rent that was the subject of the dispute at the Original Hearing. The Landlord states that in 2019 the Tenant was consistently late with rent payments and that the Landlord had repeated discussions with the Tenant about the requirement to pay the rent on time.

The Landlord states that the rent for May 2022 has been paid and that if the Landlord is entitled to an order of possession the Landlord requests that order to be effective May 30, 2022.

Analysis

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Given the undisputed evidence of four late rent payments in the six months prior to the Notice being given to the Tenant, I find that the Landlord has substantiated that the Notice is valid for its stated reason. There is no supporting evidence of any extraordinary or extenuating circumstances that prevented the Tenant from paying its rent on time and evidence of

the pandemic or financial difficulties alone are not valid reasons to pay rent late. For these reasons I find that the Tenant is not entitled to a cancellation of the Notice.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act in relation to form and content provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As the Notice has been found to be valid for its reason and as the Notice complies in form and content, I find that the Landlord is entitled to an order of possession as requested.

As the tenancy is ended based on the Notice there is no need to consider the prior notice to end tenancy for cause dated November 27, 2021. As the Tenant's claims have not been successful, I find that the Tenant is not entitled to the filing fee and in effect both of the Tenant's applications are dismissed.

Conclusion

The applications are dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on May 31, 2022. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the 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 RTB under Section 9.1(1) of the Act.

Dated: May 12, 2022

Residential Tenancy Branch