



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax City Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, RP, RR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 16, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 25, 2022 (the "One Month Notice");
- an order granting more time to dispute a Notice to End Tenancy;
- an order for regular repairs;
- an order granting a rent reduction; and
- an order granting the return of the filing fee.

The hearing was scheduled for 9:30 AM on May 30, 2022 as a teleconference hearing. The Landlord's Agent D.G. attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 14 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Tenants, I dismiss the Tenants' Application without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession in relation to the One Month Notice, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord's Agent stated the following: the tenancy began on December 10, 2017. The Tenants are required to pay rent in the amount of \$2,000.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00 which the Landlord continues to hold.

The Landlord's Agent stated that the Tenants have consistently paid their rent late throughout the tenancy. The Landlord's Agent stated that he provided the Tenants with a written caution notice dated April 30, 2021 regarding the late rent payments. The Landlord's Agent stated that the Tenants have disregarded the warning and have continued to pay rent late each month from May 2021 until January 2022.

For the above-mentioned reason, the Landlord served the Tenants with the One Month Notice on January 25, 2022 with an effective vacancy date of February 28, 2022 by Canada Post Registered Mail on January 25, 2022. The Landlord's reasons for ending the tenancy on the One Month Notice is

"Tenant is repeatedly late paying rent"

The Landlord's Agent stated that the Tenants did not comply with the One Month Notice and applied late to dispute the One Month Notice. Furthermore, the Landlord's Agent

stated that the Tenants have continued to pay the rent late. As such, the Landlord is seeking an order of possession to end the tenancy.

Analysis

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

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlords wish to end the tenancy on the basis that the Tenants have been repeatedly late paying rent.

The Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

The Landlord served the Tenants with a One Month by Canada Post Registered Mail on January 25, 2022. Pursuant to Section 88 and 90 of the *Act*, the Tenants are deemed to have received the One Month Notice five days later, on January 30, 2022.

After receiving the One Month Notice, the Tenants made an Application to cancel the One Month Notice on February 16, 2022. As no one attended the hearing for the Tenants, their Application is dismissed without leave to reapply.

Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the One Month Notice complies with the requirements for form and content. I further find the Landlord has provided sufficient evidence to demonstrate that the Tenants have been repeatedly late paying rent throughout the tenancy.

As the effective date of the One Month Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order should be served onto the Tenants as soon as possible.

Conclusion

The Tenants did not appear at the time of the hearing; therefore, their Application is dismissed in its entirety without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of 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: May 30, 2022

Residential Tenancy Branch