



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1316602 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on February 16, 2022, seeking an order that cancels the 10 Day Notice to End Tenancy for Cause (the “10-Day Notice”), and for reimbursement of the Application filing fee.

The Tenant also filed a second Application on February 20, 2022 for an order cancelling the One Month Notice to End Tenancy for Cause (the “One-Month Notice”), the Landlord’s compliance with the legislation/tenancy agreement, and reimbursement of the Application filing fee. This second Application was joined to the first and the matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 30, 2022.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Preliminary Matters

At the outset of the hearing, the Landlord advised that the Tenant paid the rent amount in full for the month of February 2022, on February 14, 2022. The landlord had issued the 10-Day Notice on February 8, 2022. This was for unpaid rent for that month, where the Tenant did not pay the expected rent on time on February 1st. At the outset of the hearing, the Landlord advised that the Tenant then paid the rent amount in full for the month of February 22, and the Tenant confirmed the same.

I find as fact that the tenant paid the February 2022 rent in full. There is agreement that the full amount constitutes compliance with the *Act*. For this reason, I dismiss the Tenant's application for cancellation of the 10 Day Notice, with no reimbursement of the filing fee. In effect, the Landlord has withdrawn the 10 Day Notice. For this reason, there is no end of the tenancy for unpaid rent.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

The matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord. Therefore, I dismiss the Tenant's claim for the Landlord's compliance with the *Act* and/or the tenancy agreement.

Issues to be Decided

Is the Tenant entitled to cancellation of the One Month Notice to End Tenancy?

Should the Tenant be unsuccessful in cancelling the Notice, is the Landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Background and Evidence

In their evidence the Tenant provided a copy of the tenancy agreement for this tenancy that started on September 10, 2021. At the time of this hearing, the rent was \$3,000 per month. Both parties signed the agreement on September 13, 2021.

The Tenant provided a copy of the One-Month Notice document. The Landlord served this document to the Tenant via registered mail. This gave the move-out date of March 31, 2022. On page 2 of the document, the Landlord provided the single reason they issued this document: Tenant is repeatedly late paying rent.

On page 2 of the document, the landlord provided details:

Repeatedly late paying rent as detailed below:

- Sept. 2021 rent paid (partial) on Oct. 1/2021
- Oct. 2021 rent paid on Oct. 13/2021
- Nov. 2021 rent paid on Nov 3.2021
- Dec. 2021 rent paid on Dec. 7/2021
- Jan.2022 rent paid on Jan 4.2022
- Feb 2022 rent paid (partial) on Feb 4/22

Tenant was repeatedly given notice to pay rent on time but chose to pay late.

In their evidence, the Landlord provided copies of their messages to the Tenant about rent being past due:

- October 3, 2021: October rent and \$500 of September rent remains unpaid
- October 6, 2021: further reminder of October rent/September balance
- October 8, 2021: further reminder
- October 12, 2021: further reminder
- December 6, 2021: asking for December rent
- January 3, 2022: Landlord asking for January rent
- February 2, 2022: Landlord asking for February rent

In the hearing the Tenant referred to a written piece they stated was submitted as evidence in this matter. I was not able to locate this piece of evidence in their submissions. The Landlord submitted the document to the Residential Tenancy Branch online portal during the hearing, and I verified the content therein with the Tenant.

In this statement, the Tenant presented that “mitigating circumstances” led to 2 occasions of late rent payments. They provided a background of their relationship with the Landlord. The Tenant described the circumstances of the October rent payment wherein they were attempting to further negotiate terms of the tenancy with the Landlord at that time. For each of November, December and January, the Tenant presented that they had the rent cheques ready for the Landlord to pick up, and “[the Landlord] could have come and got them if he had wanted to, instead of creating illusions that it was me being late.” Further: “When [the Landlord] did not pick them up, I took them to [the Landlord’s] office but I should not have had to deliver them, especially as [the Landlord] owned the house next door. I was not late; [the Landlord] was late.”

In the hearing, the Tenant presented that it was “not really intentional to be late, rather it was not intentional due to a number of personal circumstances.” They cited the amount of funds the Landlord was holding as an initial deposit from the Tenant, and the Landlord actually “had three months of advance rent the whole time.”

Analysis

The *Act* s. 47 states, in part:

(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

The *Act* s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to s. 47 and I accept the Landlord’s evidence that they served this document to the Tenant via registered mail. Further proof of service is the fact that the Tenant applied for dispute resolution a short time after the Landlord served it to them.

The *Act* s. 52 provides:

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). . . state the grounds for ending the tenancy,

. . .and

(e)when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content.

The Tenant pleaded that they did not think late rent was critical, and that they understood there was a little leniency. I find the Tenant was not relieved of complying with the terms of the tenancy agreement which states the rent was due on the 1st of each month. The Tenant did not clarify with the Landlord that it was the Landlord’s responsibility to go and obtain cheques directly from them; I conclude it was easy to

infer this was *not* the arrangement in place given the amount of messaging that went on with the October 2021 rent situation.

The Landlord provided sufficient evidence to show the Tenant was repeatedly late paying rent; this constitutes a reason for ending the tenancy as per s. 47. There is no provision in the *Act* for the Tenant having a reasonable excuse for late payment of rent; moreover, s. 26 of the *Act* sets the positive duty upon the Tenant for may rent “when it is due under the tenancy agreement.”

Finally, I give no credence to the Tenant’s statement that the Landlord held a certain deposit (since made payable back to the Tenant via a separate dispute resolution process) that would have been available for rent should the Landlord have needed it. Rent payment is not a matter of a line of credit for the Landlord to use at their leisure.

I find the Landlord provided ample evidence to show the Tenant’s repeated late payment of rent. Further, I find the One-Month Notice issued by the Landlord on February 8, 2022 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord’s notice to end tenancy and their Application is dismissed or the landlord’s notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord here is entitled to an Order of Possession.

Given the Tenant was not successful on this Application, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

Under s. 55(1) and 55(3) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it will be 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 s. 9.1(1) of the *Act*.

Dated: June 1, 2022