



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #110065886: OPC, FFL
File #110065454: OLC, CNE-MT, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy signed on February 18, 2022 (the “One-Month Notice”);
- Return of its filing fee pursuant to s. 72.

The Tenant files a cross-application in which she seeks the following relief under the *Act*:

- An order pursuant to s. 47 to cancel the One-Month Notice;
- An order pursuant to s. 66 for more time to cancel the One-Month Notice;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- Return of her filing fee pursuant to s. 72.

G.S. appeared as agent for the Landlord (the “Agent”). A.K. appeared as the Tenant.

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 Agent advised that the One-Month Notice was served on the Tenant via registered mail sent on February 18, 2022. The Tenant acknowledges receiving the One-Month Notice on March 1, 2022. I find that the One-Month Notice was served in accordance

with s. 88 of the *Act* and was received by the Tenant on March 1, 2022 as acknowledged by her at the hearing.

The Agent further advised that the Landlord's application and evidence was served on the respondent tenants by way of registered mail sent on March 19, 2022. Tracking information is provided by the Landlord with respect to the two registered mail packages sent, one for each respondent. The Tenant acknowledges receiving the Landlord's application materials. I find that the Landlord served its application materials on the respondents by way of registered mail sent on March 19, 2022 in accordance with s. 89 of the *Act*. I further find that the Tenant received the application materials as acknowledged by her at the hearing. With respect to other named respondent, I deem that they received the Landlord's application materials on March 24, 2022 pursuant to s. 90 of the *Act*.

Tenant's Attendance at the hearing

It should be noted that the Tenant attended the hearing at 9:40 AM, 10 minutes after it had started. Upon the Tenant's attendance, I provided a summary of the evidence provided by the Agent, which the Agent confirmed was accurate. The Tenant provided submissions, the Agent provided a rebuttal, and the Tenant provided a rebuttal. Submissions from both sides had completed and I was confirming how the Tenant would like to receive the written reasons when she abruptly disconnected. The Agent and I remained on the line for several minutes. In light of the fact that the hearing had concluded and given that the Tenant did not reconnect after several minutes, the hearing ended at 10:00 AM.

Preliminary Issue – Service of the Tenant's Application

The Tenant advised that she served her application materials on the Landlord via registered mail. The Agent denies receiving the Tenant's application and further advised that he only learnt that the Tenant had applied at all at the hearing. The Tenant did not provide proof of service to the Residential Tenancy Branch in the form of a tracking receipt.

I enquired from the Tenant when the registered mail had been sent and she was unable to provide clarity with respect to that detail. The Tenant was unable to provide a tracking number for her application. It should be noted that I provided the Tenant some time

during the hearing to search her documents to provide this information. The Tenant was unable to do so.

Rule 3.5 of the Rules of Procedure requires an applicant to be prepared to demonstrate service of their application materials during the hearing. With respect to service of the Tenant's application, I have the Tenant providing affirmed testimony that she served it via registered mail, though could not provide specifics, and affirmed testimony from the Landlord's agent saying it had not been received. Based on the contradictory information provided and the lack of documentary evidence provided by the Tenant with respect to service, I find that the Tenant has failed to demonstrate service of her application.

Policy Guideline #12 provides guidance with respect to the services provisions of the *Act*. It states that when one or more parties to an application have not been served, the matter may proceed, be adjourned, or dismissed with or without leave to reapply.

Under the circumstances, I have two applications before me: one filed by the Landlord and one filed by the Tenant, both pertaining to the enforceability of the One-Month Notice. I am satisfied that the Landlord filed its application on time and in a method provided for under the *Act*. The Tenant acknowledged receiving that application. It would be inappropriate, in my view, to adjourn both applications in light of the fact that the Landlord followed the rules, served their application, was prepared to demonstrate service at the hearing, and the Tenant acknowledge its receipt. A delay in hearing the Landlord's application due to the Tenant's failure to show up at the hearing prepared to demonstrate service of her own application would be unfairly prejudicial to the Landlord.

Given that the Landlord served its application, the hearing should proceed on it. In light of this, I find that since the Tenant failed to demonstrate service of her application, it is dismissed with leave to reapply, except for the Tenant's claim for the return of her filing fee, which is dismissed without leave to reapply. She should bear the cost for the filing fee due to her failure to demonstrate service of her application.

Issues to be Decided

- 1) Is the Landlord entitled to order for possession?
- 2) Is the Landlord entitled to the return of its filing fee?

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 issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on August 24, 2020.
- Rent of \$1,800.00 and a parking fee of \$25.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$900.00 in trust for the Tenant.

The Landlord provides a copy of the tenancy agreement that confirms these details.

The Agent indicates that the One-Month Notice was issued due to the Tenant's repeated late rent payments.

The Agent advised that the Landlord had issued a previous One-Month Notice to End Tenancy with respect to what were alleged unreasonable disturbances from the Tenant. I am told that that One-Month Notice was successfully disputed by the Tenant. The Agent says that after the previous notice to end tenancy had been cancelled, the Tenant began to start paying her rent late. The Tenant denies that her late rent payments relate to the previous notice to end tenancy that she successfully disputed.

The Landlord provides a summary of rent payments from August 2021 until February 2022, which shows screenshots of the interac etransfer it received from the Tenant. They show the following Interac etransfers:

- August 8, 2021 - \$350.00
- September 2, 2021 - \$1,800.00
- October 7, 2021 - \$1,825.00
- November 1, 2021 - \$1,825.00
- December 1, 2021 - \$1,825.00
- January 10, 2022 - \$625.00
- January 11, 2022 - \$500.00
- January 18, 2022 - \$150.00
- February 2, 2022 - \$100.00
- February 8, 2022 - \$1,700.00

The Tenant indicated at the hearing that the payment history provided by the Landlord was inaccurate, though could not provide specific confirmation of which payments were inaccurate except to say that she had paid rent in full on September 1, 2021. The Agent denied this. The Tenant provided no documentary evidence to support that her rent was paid on dates other than those listed by the Landlord in its summary.

The Tenant further advised that if she was ever late in paying rent, she would contact the Agent to confirm this and indicates that the Agent consented to late rent payment. The Agent denies this occurring and indicates that he does not have the Landlord's consent to accept rent late. The Tenant provided no documentary evidence with respect to the purported consent from the Landlord through the Agent that late rent payments were acceptable.

The Tenant argued that she never received a warning from the Landlord with respect to late rent payments. The Landlord provides in its evidence that two 10-Day Notice to End Tenancy, one from January 2022 and the other from February 2022, which the Agent says were served on the Tenant. The Tenant indicates she received these but that they were not effective as she paid the late rent within 5-days of receiving the 10-Day Notices.

Analysis

The Landlord seeks an order for possession.

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.

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).

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.

The Landlord provided records showing late rent payment in August 2021, September 2021, October 2021, January 2022, and February 2022. The Landlord also provides copies of two 10-Day Notices to End Tenancy, from January and February 2022. The Tenant acknowledges receiving the two 10-Day Notices but that rent was paid within 5-days of receiving those notices.

I find that the Landlord has established that the Tenant paid rent late on more than three occasions, specifically the Tenant was late in paying rent in August 2021, September 2021, October 2021, January 2022, and February 2022.

The Tenant argued that the e-transfers did not show the accurate dates but provided no evidence to support that these dates were inaccurate and was unable to specify which dates were inaccurate. The Tenant's bare assertion that the Landlord's evidence is inaccurate is directly contradicted by her oral evidence stating that she acknowledged the receipt of the two 10-Day Notices and that she paid rent such that they were no longer effective. This would support that at the very least, rent was not paid on the first of January and February 2022. Without specific information or evidence to support that

the etransfer summary provided by the Landlord is inaccurate, I do not find the Tenant's claims that they are inaccurate are credible.

The Tenant further argued that she had the consent of the Landlord to pay rent late. No documentary evidence was provided to support this. Indeed, the issuance of the two 10-Day Notices would appear to directly contradict this point. Further, the Agent denies ever providing such consent and emphasized that the Landlord does not consent to late rent payment. I do not believe the Landlord consented to the late payment of rent given the Agent's denial and the fact that the Landlord issued two 10-Day Notices.

It should be further noted that the Tenant failed to file her application to dispute the One-Month Notice within 10 days of receiving it as required under s. 47(4) of the *Act*. I would further find that the Tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*.

I am satisfied that the One-Month Notice was properly issued in compliance with s. 47 of the *Act*. It is a proper notice, and the Landlord is entitled to an order for possession under s. 55. The Tenant shall provide vacant possession of the rental unit within two days of receiving the order for possession.

Conclusion

The Tenant's application is dismissed as it was not served on the Landlord.

The Landlord is entitled to an order for possession under s. 55 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.

As the Landlord was successful in its application, I find that it is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the tenants pay the Landlord's \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord withhold \$100.00 from the tenants' security deposit in full satisfaction of its filing fee.

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: June 27, 2022

Residential Tenancy Branch