



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, AS, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
3. An Order to be allowed to assign or sublet and the landlord's permission has been unreasonably withheld pursuant to Section 65(1)(g) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant acknowledged service of the One Month Notice on February 28, 2022. I find the Tenant was sufficiently served with the One Month Notice on February 28, 2022 according to Section 71(2)(b) of the Act.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on March 18, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to a Canada Post tracking number as proof of service, but did not provide a receipt for its purchase. The Landlord said her condominium had a flood and she was checking her mail every week, but she did not receive the Canada Post notice about the delivery. The Landlord called the RTB on April 1, 2022 and received a courtesy copy of the NoDRP package. I find the Landlord was sufficiently served with the NoDRP package on April 1, 2022 according to Section 71(2)(b) of the Act.

The Tenant said he served his evidence in the same package as the NoDRP package on March 18, 2022. The Landlord did not receive the Tenant’s NoDRP package or his evidence. RTB Rules of Procedure 3.1 specifies that the applicant must serve the respondent with copies of the NoDRP package and any other evidence they intend to rely on; and, Rule 3.5 specifies that proof of service is required at the dispute resolution hearing to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure. I find that the Landlord was not served with the Tenant’s NoDRP package or evidence for this hearing. The Tenant also did not upload his evidence into the RTB website, and accordingly, his evidence will not be considered in this matter.

The Landlord stated she served her evidence on the Tenant via email on June 15, 2022. The Tenant did not confirm receipt and stated that they have no agreement to serve legal documents via email. I note I do not see an email address for service for the Tenant was not provided in the tenancy agreement or via form #RTB-51. Section 43(1) of the Residential Tenancy Regulation allows service via email if an email address was provided for this purpose. RTB Policy Guideline #12 says:

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. ... A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - “Address for Service” form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. ... Parties may face delays

or risk their application being dismissed if service is not effected in accordance with the legislation.

I find that the Landlord's evidence was not served properly on the Tenant, and I decline to refer to the Landlord's documentary evidence in this matter.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Is the Tenant entitled to an Order to be allowed to assign or sublet the rental unit?
5. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant testified that his tenancy began in 2014 with a previous landlord. The tenancy with the current Landlord began as a fixed term tenancy on September 1, 2016. The Tenant stated there are end of tenancy expectations with this Landlord. The uploaded tenancy agreement states the fixed term tenancy was created on September 3, 2021 and ends on September 3, 2022. Monthly rent is \$2,150.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was March 31, 2022.

The Landlord provided further details of the cause to end this tenancy as:

Late rent (6 days+) in past year: Feb/22, Jan/22, Dec/21, Oct/21, Jun/21, Apr/21, Jan/21

In additional to 4 1/2 years of more late rent payments. I have all the texts, emails and banking documentation.

The Landlord testified that the previous landlord said he would speak to the Tenant about his late paying of rent. He said he spoke to the Tenant, and he assured the Landlord it would not be the case going forward. However, throughout the tenancy with this Landlord, she has experienced the same late rent paying situations. The Landlord said the Tenant has given her rent cheques and she said there have been non-sufficient funds charged. They have had many text conversations, which the Landlord states she initiated, about late payment of rent. Aside from the dates listed in the Landlord's One Month Notice, the Tenant was late paying rent in November 2021. She said he paid \$4,200.00 on November 2, 2021, which was for October and November's rents. As for late rent payments starting from March this year, the Landlord received the rent late on March 2, then again on May 3. The Landlord asks how many chances does she have to give the Tenant? She wants a reliable Tenant and does not want to have to deal with these kinds of situations going forward.

The Tenant stated he has been late paying rent a '*handful*' of times. He said sometimes he has paid rent early. He does not agree with the Landlord about the number of times he has been late paying rent; however, when late, he has remedied the situation. The Tenant offered as a solution, that he pays two or three months rent in advance.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the Tenant's benefit, Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: cause

47 (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;*

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was sufficiently served on February 28, 2022. I find the Landlord's One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on March 6, 2022 which was within the 10 days after receiving the One Month Notice.

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. It states:

...

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 testified to being frustrated with the number of times the Tenant has been late paying rent. Before serving the One Month Notice, the Landlord listed seven times the Tenant had been late paying rent. The Tenant states it has been a handful of times, but I find the number of times has been more than a handful of times. I also find the Landlord has not waived reliance on RTB Policy Guideline #38 and the number of times the Tenant has been late satisfies Section 47(1)(b) of the Act. I find the Landlord has, on a balance of probabilities, proven that the Tenant has been repeatedly late paying rent and she has established cause to end this tenancy. I dismiss the Tenant’s application in entirety without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the One Month Notice complies with Section 52 of the Act, and I dismissed the Tenant's application. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 12, 2022

Residential Tenancy Branch