



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC; OLC

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47;
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The Tenants (DA and JM) attended the hearing. The Landlord was represented at the hearing by the Property Manager (TJ) and Building Manager (JR). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue #1: Service of Documents

Tenant (DA) testified he served the Landlord with the Notice of Dispute Resolution on the date it was generated by the Residential Tenancy Branch (RTB), May 10, 2022. The document was hand delivered to the Building Manager (JR) by the Tenant (DA).

The Property Manager (TJ) confirmed that the Tenants served the Building Manager (JR) with the Notice of Dispute Resolution package; but the Building Manager did not receive a complete evidence package—specifically, the letter that was uploaded as part of the Tenant's evidence package was not provided.

The Tenants were vague about whether or not the letter was provided to the Building Manager (JR) in the evidence package.

The Property Manager (TJ) stated that if the document was read into evidence, he was willing to proceed without having personally reviewed the physical document. The document was read into evidence.

The Tenants confirmed that the Building Manager (JR) served the Tenants personally with their evidence package, which consisted solely of the rent payment ledger on August 22, 2022. The

Tenants argued that had they received the ledger earlier, they would have requested dates the money orders were procured from the bank.

Residential Tenancy Branch Rules of Procedure (the “Rules”), Rule 3.15 “Respondent’s evidence provided in a single package” states in part:

.....

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. [emphasis added]

“Days” as found in the “Definitions” of the Rules reads:

.....

(c) In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded”

The Building Manager (JR) delivered the respondent’s evidence, in person, on August 22, 2022 and submitted proof of service. The hearing was scheduled for August 29, 2022. The RTB and the Tenants received the evidence six (6) days prior to the hearing.

I have considered the Tenants’ argument that had they received the document earlier, they would have gone to the bank and obtained proof of when the money orders were purchased and submitted the dates of purchase into evidence.

Rule 3.15 states the respondent must serve on the applicant and submit to the RTB as soon as possible evidence they intend to rely on. It is clear the Property Management Company waited until the last possible moment to provide the ledger to the Tenants and the RTB and misunderstood the instruction (“received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing”) to exclude the date of delivery. The Property Management Company, more likely than not, had this evidence well in advance of the hearing and could have provided the ledger sooner.

Notwithstanding the above, I am uncertain how the dates of purchased money orders are relevant to the matter of submitting late rent payments. Although the money orders may have been purchased on a certain day, “date of purchase” is not evidence of when the Landlord received the money orders. Further, if the Tenants believed that the dates of the money orders

were of sufficient significance to prove their case, that evidence should have and could have been submitted with their application.

The Tenants confirm they received the ledger on Monday, August 22, 2022. The ledger is the only evidence the Property Management Company submitted into evidence. I find the Tenants had sufficient time to review the document prior to the hearing. I am unable to conclude the Tenants were prejudiced as a result of the one-day delay. I will admit the ledger into evidence.

Preliminary Issue #2: Unrelated Issues

The RTB Rules of Procedure (the “Rules”) 2.3 and 6.2 allow an arbitrator to consider whether issues are related and should be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Tenants applied for cancellation of the One Month Notice and that the Landlords comply with the Act. Pursuant to Rule 2.3, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the RTB are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we are able to address disputes in a timely and efficient manner.

Upon review of the Tenant’s application, I find that the primary issue is whether the tenancy will continue or end pursuant to the One Month notice to end tenancy that is subject to the application. The additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to Rule 2.3 of the Rules, I dismiss the Tenants claim for:

- an order that the Landlord comply with the Act, the tenancy agreement, or the regulations under s. 62.

The hearing proceeded on the issue tied to the notice to end tenancy signed on April 20, 2022.

Issues to be Decided

Are the Tenants entitled to:

- 1) an order cancelling the Notice?

If the Tenants fail in their application, is the Landlord entitled to:

- 1) an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The tenancy agreement was uploaded into evidence. The parties entered into a written fixed term tenancy agreement starting at noon on the 1st of May 2021 and ending at noon on the 30th of April 2022 thereafter automatically converting “to a month-to-month tenancy unless otherwise terminated in accordance with applicable law”. Monthly rent is \$1958.00 and is payable on the first of each month. It appears based on the tenancy agreement uploaded that the previous property management company waived the security deposit.

The Tenants confirmed that on April 20, 2022 they received the One Month Notice dated April 20, 2022, posted to their door. The One Month Notice sets out an effective end of tenancy date of May 31, 2022 and was issued for:

- Tenant is repeatedly late paying rent
- Tenant has moved in another occupant of the suite without notifying Landlord
- Tenant keeps multiple dogs in the suite without notifying the Landlord and paying the required pet deposit
- Tenant smokes on their balcony which disturbs neighboring tenancies

Rule 6.6 of the Rules, “The standard of proof and onus of proof” reads in part,

.....

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the Landlord must prove the reason they wish to end the tenancy when the Tenant applies to cancel a Notice to End Tenancy.

Rule 7.18 “order of presentation” reads:

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof.

One instance when the respondent bears the onus of proof is where a Tenant applies to cancel a Notice to End Tenancy. In such a case, the hearing will begin with the Landlord presenting first unless the arbitrator decides otherwise.

As the Tenants applied to cancel the One Month Notice to End Tenancy for Cause, the onus to prove the case falls to the Landlord. The Landlords presented their evidence first.

The current Property Management Company took over the management of the apartment building on September 1, 2021.

The Property Manager (TM) acknowledged when they took over management of the building, the rent payment method switched to their service provider. TM acknowledged problems with the app. To compensate for the learning curve and any technical issues experienced by end users, “late fees” were waived for the month of September 2021.

In January 2022, the Property Management Company switched to a different third-party provider to administer rent collection. All tenants were provided with information well in advance of the change with instructions. Tenants, who chose to use the portal, were required to set up an account with the service provider. Tenants were issued an “invitation” that allowed access to set up an account and to the portal. Tenants were told if they had problems setting up the account, they must contact the third-party provider directly.

All tenants across the various properties were given the option to pay by cheque, money order, or through the app portal. Additionally, the Property Management Company waived late fees for January 2022 recognizing the transition may be difficult for some end users. The Property Manager stated that the Property Management Company manages close to 6000 tenants, who pay their rent successfully using this third-party provider’s portal.

The Tenants (DA and JM) reported to the Building Manager (JR) problems setting up the account. The credit card information they uploaded was not accepted. Although it is the Tenants’ responsibility to solve any set up issues directly with the service provider, the Building Manager (JR) contacted the service provider to see if she could troubleshoot. She was told that only one access link can be sent to the Tenants and if the Tenants were having problems, they must call the service provider directly. JR explained this to the Tenants.

The Property Manager (TJ) stated that the Tenants repeatedly pay rent late. In the eleven (11) months since the Property Management has taken over managing the property the only month rent was paid on time was February 1, 2022.

The Property Manager (TJ) provided both direct testimony and written details (ledger) which records rent payments. While the Property Manager (TJ) provided dates of rent payments subsequent to April 2022, I have not included that information in the chart as those dates are after the One Month Notice was issued and unrelated to the April 22, 2022 Notice.

Rent Due	Rent Paid	Late Fee Assessed
September 2021	September 22, 2021	No Late Fee
October 2021	October 13, 2021	Late Fee \$25 10/21/21
November 2021	November 3, 2021	Late Fee \$25 11/03/21

December 2021	December 17, 2021	Late Fee \$25 12/02/21
January 2022	January 26, 2022	No Late Fee
February 2022	February 1, 2022	Paid on time
March 2022	No rent paid	
April 2022	April 27, 2022 (for March and April rent)	Late fee \$25 04/03/22

TJ states although the One Month Notice cited multiple issues for “cause” the primary issue is the chronic pattern of late rent payments. The One Month Notice was issued because of the frustration and multiple time-consuming follow-ups required to collect rent that is due on the 1st of each month as well as the associated administrative costs. The administrative costs associated with the chronic late payments are well in excess of the \$25 late fee surcharge.

In conclusion, the Property Manager (TJ) referenced the tenancy agreement, signed by all parties and each page initialed by all parties, which requires the monthly rent to be paid on or before the first day of each month.

The Tenant (JM) was the primary spokesperson on behalf of the tenancy. The Tenants do not deny late rent payments. JM acknowledged that rent is due on the 1st of the month but didn’t think paying the rent late ‘was that big of a deal’ since the rent was always paid. The Tenant also pointed out that the ledger showed when the payment was deposited, not when it was received. For example, the Tenant thinks the August rent was paid on or about August 8 but was not deposited until August 19,

The Tenant (JM) stated that the transition from the payment system of the previous Property Management Company to the system used by this Property Management Company was problematic. For example, the system assigned the Tenants multiple rental units. The Tenants brought this to the attention of (JR) Building Manager and the problem was fixed.

When the Property Management Company introduced the new app in January 2022, the app would not accept the Tenant’s credit card. The Tenants submitted a screen shot of the error message. The Tenant stated that since the Property Management Company introduced that method of payment, it was the Property Management Company’s responsibility – not the Tenants’ – to make sure the app worked. JM felt it was not his responsibility to call the service provider to fix the problem and neither of the Tenants called the service provider.

The Tenants stated that the Building Manager did not give them the option of pay by cheque, only pay through the portal or by money order. The Tenant stated that his bank charges a fee for service to issue a money order, whereas his girlfriend’s bank does not.

The money was transferred to his girlfriend's bank account, and she would get the money order. The Tenant provided no explanation when asked why the money orders were not organized prior to the end of month for payment on the 1st of each month or why the March rent was missed and paid in April.

The Tenants also alleges the real motive behind the eviction is rent increases for new tenants that move into the building.

Analysis

According to subsection 47(4) of the Act, a Tenant may dispute a One Month Notice to End Tenancy for Cause within 10 days after the date the Tenant receives the notice. The Tenants confirmed they received the Notice on April 20, 2022 . The Tenants filed their application to dispute the Notice within the required time limit under the Act. The onus, therefore, shifts to the Landlord to justify the basis of the One Month Notice to End Tenancy.

Although the Tenants provided a partial explanation for why some rent payments were late, viz., problems with the third-party service providers portals, they provided insufficient reasons explaining why, other than the February 1, 2022 rent payment, rent in the other months (excluding the app problems) were late or missed. Rent due March 1 and April 1 was not paid until late April and recorded in the ledger as paid April 27.

While the Tenants argue the portals played a significant role in their late rent payments, I note the Property Management Company took this into account and waived the \$25 late fee twice (September 2021 and January 2022) recognizing potential challenges end users may have in changing platforms. The Tenants refused to contact the third-party provider to fix the account set up problem after the Building Manager (JR) explained she had no access to third party tenant accounts and was told the Tenants must contact the provider directly. Rather than call the service provider, which may have been an easy fix, the Tenants chose to pay their rent by money order.

As rent is payable on the first of the month, the responsibility lies with the Tenants to make appropriate arrangements to ensure that rent payment are made on time. Having chosen to pay by money order, the Tenants failed to take all reasonable steps to avoid late rent payments. This includes thinking about and scheduling for processing times, bank hours, and closures when obtaining a money order.

Section 26 (1) of the Act, "Rules about payment and non-payment of rent" reads:

26 (1) 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.

I find the rent payment expectation is clearly set out in the Tenancy Agreement: rent is due on the first of the month and is subject to late fees if paid late. Each page of the Tenancy Agreement was initialed by all parties, signed, and dated.

I find that the repeated late rent payments meet the criteria for sufficient cause to end this tenancy under s. 47(1)(b) of the Act. As the criteria for repeated late rent payments under s. 47(1)(b) is a minimum of three (3) late rent payments, I find the Tenants exceeded the minimum of three late payments and were given sufficient opportunity to remedy the issue to ensure that the rent was paid in accordance with the Tenancy Agreement. In making this finding, I am guided by the law and policy.

RTB Policy Guideline #38, provides direction regarding the circumstances whereby 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....

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.

Although the Tenants alleged the Landlord was evicting them to re-tenant the unit at a higher rent, the Tenants provided insufficient evidence to support this claim.

I find that the Landlord has met the burden of proof to support that the tenancy should end on the grounds of repeated late rent payments. Accordingly, I am dismissing the Tenant's application to cancel the One Month Notice dated April 20, 2022, without leave to reapply.

Section 55(1) of the Act reads as follows:

- 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 s. 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.

A copy of the One Month notice was submitted for this hearing. I find that the Landlord's One Month Notice dated April 20, 2022 complies with s. 52 of the Act, which states that the Notice 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 s. 45(1) or (2) [*Tenant's notice*], state the grounds for ending the tenancy, and
- e) when given by the Landlord, be in the approved form.

Based on my decision to dismiss the Tenants' application for dispute resolution and pursuant to s. 55(1) of the Act, I find that this tenancy ended on the effective date of the One Month Notice, May 31, 2022. As that date has passed, I find that the Landlord is entitled to a two (2) day Order of Possession. The Landlord will be provided a formal Order of Possession which must be served on the Tenants. If the Tenants do not vacate the rental unit within the two (2) days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the Tenant's application to cancel the One Month Notice dated April 20, 2022 without leave to reapply. I find the Landlord's One Month Notice dated April 20, 2022 is valid and effective as of May 31, 2022.

I dismiss the Tenants' application for an order that the Landlord comply with the Act, without leave to reapply.

Pursuant to section 55 of the Act, I order that the Tenants deliver vacant possession of the rental unit to the Landlords within two (2) days of being served with a copy of this decision and attached order(s) by the Landlord. Should the Tenants fail to comply with this Order, this Order may be filed 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: August 31, 2022

Residential Tenancy Branch