



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated April 12, 2022 ("One Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenant, K.K., and the Landlords, N.S. and H.A., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

At the start of the hearing, the Tenant said he does not understand English very well, and he asked for an interpreter. I advised the Tenant that he is responsible for bringing his own interpreter. Further, throughout the hearing, the Tenant was able to express himself clearly. In any situation in which he said he did not understand something, I explained it again in more plain language, spoken slowly. I find that there were not complicated legal arguments raised that would be problematic for the Tenant to understand.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Are the Landlords entitled to an order of possession?
- Are the Landlords entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 10, 2020, with a current monthly rent of \$2,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$1,100.00, and no pet damage deposit.

The Landlords said in the hearing that they served the One Month Notice to the Tenant on April 12, 2022, in person and by email. The One Month Notice has an effective vacancy date of June 10, 2022, which is automatically corrected by the Act to be May 31, 2022. The ground checked off for issuing the One Month Notice was that the Tenants are repeatedly late paying rent.

The Tenant agreed that he pays rent late regularly. He indicated that he pays his rent when he is paid for his work, and this is not usually on the day the rent is due to the Landlords.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for 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;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. 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.

In this case, the Landlord alleged that the Tenants pay their rent late, in contravention of the Act and tenancy agreement. In the hearing, the Tenant confirmed that this is true.

When I consider all the evidence before me overall, I find that the Landlords have provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, the Landlords are entitled to an Order of Possession. As such, and pursuant to section 62 of the Act, I dismiss the Tenants' claim to cancel the One Month Notice without leave to reapply.

Accordingly, and pursuant to section 55 of the Act, I grant the Landlords an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective TWO DAYS** after the Tenants receive the Order.

Given their lack of success in this matter, I decline to award the Tenants with recovery of their \$100.00 Application filing fee from the Landlords. This claim is dismissed without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice, as the Landlords provided sufficient evidence to meet their burden of proving the validity of the One Month Notice. I dismiss the Tenants' Application wholly, as I find that the One Month Notice is valid and effective as of May 31, 2022.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlords, effective **two days after service of this Order** on the Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible, and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch