



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated February 2, 2022 ("One Month Notice"); and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, and an agent for the Landlord, S.S. ("Agent"), 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 Landlord 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.

The Agent said the Landlord served the Tenant with the Notice of Hearing documents and evidence by registered mail sent on May 7, 2022. The Landlord provided a Canada Post tracking number supporting this testimony. The Agent said the Landlord also sent all of the documents to the Tenant via text sent on May 7, 2022. The Tenant acknowledged having received the text from the Landlords with the Notice of Hearing documents and some evidence. However, the Tenant said he received another package from the Landlord only five days prior to the hearing. As these documents were not served in compliance with the Rules, I will not consider any documents sent in the late package. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and the Parties

confirmed these 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.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on May 1, 2017, and ran to May 1, 2019. The Parties said they signed a new tenancy agreement in 2020, with a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$650.00, and no pet damage deposit.

The Landlord submitted the One Month Notice, which was signed and dated February 2, 2022, and which has the rental unit address. The One Month Notice was served by attaching it to the rental unit door on February 2, 2022, with an effective vacancy date of March 31, 2022. It was served on the grounds that the Tenant repeatedly pays rent late.

In the hearing, the Agent said that the Tenant was late paying rent in November 2021, December 2021, and February 2022. The Tenant acknowledged that he had been late paying rent in these months; however, he said he received hard copy cheques from his employer at the time, so he had to deposit the cheques to pay his rent, which is why he was late. The Tenant said:

Those three times were the only times I was late. I told my boss I had to go pay rent. I had to go to the bank and physically deposit the cheque. From then on, I was never late, so the issue was resolved. I receive all direct deposits now with my new employer, so there have been no issue for the last six months.

I asked the Landlord if he is interested in discussing settlement options, if the Tenant has not been late since the One Month Notice was served. The Agent said the Landlord is not a bank and that rent is due when it is due. The Agent said:

[The Landlord] is not interested in a settlement. He issued the Notice and is moving forward. [The Landlord] has done what he has had to as a landlord, and he would like to move on with this notice and would like an order of possession.

When I asked the Tenant why I should cancel the One Month Notice and *not* give the Landlord an order of possession, the Tenant referenced disputes the Parties had experienced during the tenancy. However, these issues did not relate to the Tenant having paid rent late, and therefore, I find that they are not relevant to the issues before me in this matter.

The Agent also mentioned that the Tenant's ability to pay on time after the One Month Notice was served is not relevant, because it would not have happened, if the hearing had been scheduled sooner after the Landlord applied for dispute resolution. b

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act sets out that a tenant must pay rent when it is due:

Rules about payment and non-payment of rent

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.

Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of 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;

Policy Guideline 38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the

minimum number of instances of late payments required to support this type of Notice to End Tenancy. [emphasis added]

I find that the Tenant did not describe any exceptional circumstances that prevented his ability to pay his rent on time. The fact that the Tenant's employer paid him by cheque, which delayed the Tenant's ability to pay the Landlord on time is not something that was outside of the Tenant's control. I infer that the Tenant took this job without considering the impact on his ability to pay his rent on time. His move to an employer who pays through direct deposit demonstrates what was possible.

I find that the undisputed evidence before me is that the Tenant was late paying rent to the Landlord at least three times in the six months before the Landlord served the Tenant with the One Month Notice. I find that sections 47 and 62 of the Act require that I award the Landlord with an order of possession for the rental unit. I, therefore award the Landlord with an Order of Possession of the rental unit, pursuant to section 55 of the Act.

Given the totality of the evidence before me, including, but not limited to the length of the tenancy, the condition of the housing market, and pursuant to Policy Guideline #54, I find that an appropriate **effective date** of the **Order of Possession** is **September 30, 2022, at 1:00 p.m.**

Given his success, the Landlord is also awarded recovery of his **\$100.00** Application filing fee from the Tenant. The Landlord is authorized to retain \$100.00 from the Tenant's \$650.00 security deposit in complete satisfaction of the monetary award granted.

Conclusion

The Landlord's claim for an order of possession is successful, as the Tenant acknowledged that he was late paying rent at least three times. I also award the Landlord recovery of the \$100.00 Application filing fee.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on September 30 at 1:00 p.m. **after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain \$100.00 from the Tenant's \$650.00 security deposit in complete satisfaction of the monetary award granted.

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 25, 2022

Residential Tenancy Branch