



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, DRI, FFT

Introduction

This hearing was convened in response to an application and amended application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for repairs - Section 32;
4. An Order in relation to a disputed rent increase - Section 43; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirmed receipt of the other’s evidence. The Parties each confirmed that no recording devices were being used for the hearing.

Issue(s) to be Decided

Is the notice to end valid for at least one reason?

Are the Tenants entitled to an order in relation to a rent increase?

Are the Tenants entitled to orders for the Landlord’s compliance and repairs?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started either June 1 or July 1, 2019 on a fixed term to end either June 1 or June 30, 2021. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit and \$500.00 as a pet deposit. Rent of \$3,000.00 was payable on the first day of each month. The Parties then signed a second tenancy agreement agreeing to increase the rent to \$3,350.00. Due to COVID the Landlord had earlier agreed to late rent payments for a period of time and then six months ago informed the Tenants that they would be held to making their rent payments for the first day of each month. The Tenants' evidence is that they paid rent for March 2022 on March 18, 2022, for April 2022 on April 4, 2022 and for May 2022 on May 10, 2022. The Landlord gave the Tenants a one month notice to end tenancy for cause dated June 2, 2022 (the "Notice"). The Notice sets out a reason for ending the tenancy due to repeated late payments of rent. The Notice includes details of late rent payments.

The Landlord seeks an order of possession for October 31, 2022.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the undisputed evidence that the Landlord did not agree to late rent payments as of 6 months ago and given the undisputed evidence that the Tenants signed the second tenancy agreements for payment of rent of the 1st day of each month, I find on a balance of probabilities that the Tenants were required to pay rent on the first day of each month. Given the undisputed evidence that the Tenants signed the second tenancy agreement for a greater amount of rent I also find that the Tenants were not given an illegal rent increase and I dismiss the claim disputing the rent increase.

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Based on the undisputed facts that the Tenants paid rent after the 1st day of the month for March, April and May 2022 I find that the Landlord has substantiated that the Tenant has been repeatedly late paying rent and that the Notice is valid for this reason. As the Notice is valid for at least one reason it is not necessary to consider any other reason on the Notice. I dismiss the Tenants' claim to cancel the Notice.

Section 55(1) of the Act provides that 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.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy 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 section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the supporting evidence of a copy of the Notice I find that the Notice complies in form and content. As the Tenants' application has been dismissed and as the Notice has been found valid, I find that the Landlord is entitled to an order of possession effective October 31, 2022.

As the tenancy is ended and as the claims for the Landlord's compliance and repairs are only relevant to an ongoing tenancy, I dismiss the Tenants' claims for an order for

compliance and repairs. As none of the Tenants' claims have met with success, I dismiss their claim for recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenants' application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2022. The Tenants must be served with this **Order of Possession**. Should the Tenants fail to comply with the order, the order may be filed in 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 Act.

Dated: September 28, 2022

Residential Tenancy Branch