



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT: CNC, OLC, FFT
 LANDLORD: OPC, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties testified that they were served with the other's application for dispute resolution and evidence. I find that both parties were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* as receipt was confirmed and no service issues were raised in the hearing.

Preliminary Issue – Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "Notice") and the continuation of this tenancy is not sufficiently related to the tenant's claim for an Order for the landlord to comply with the *Act* to warrant that they be heard together.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss the tenants' claim for an Order for the landlord to comply with the *Act* with leave to reapply.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
4. Is the landlord entitled to authorization to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 10, 2019 and is currently ongoing. Monthly rent in the amount of \$2,080.00 is payable on the first day of each month. A security deposit of \$1,025.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants were personally served with the Notice on July 8, 2022. The Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The effective date on the Notice is August 8, 2022. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the grounds for ending the tenancy and is in the approved form.

The landlord testified that the tenant was late paying rent three times this year and 14 times since the start of the tenancy. The landlord testified that the last three late payments of rent occurred in January, May and July of 2022. The landlord entered into

evidence the e-transfer received from the tenants for each of the 14 late payments. All e-transfers entered into evidence were for dates after the first day of each month.

The late rent payments alleged by the landlord were not disputed by the tenants. The tenants testified that the last three late payments, which occurred between January and July of 2022, were all after long weekends with statutory holidays. The tenants testified that they thought they could pay rent on the next business day after a long weekend/statutory holiday. The landlord testified that the Notice was served shortly after the third late rent payment of this year.

The tenants testified that the only time the landlord made any issue about the late payment of rent was after the July 2022 late payment of rent. The landlord testified that the tenants were repeatedly warned about late payment of rent. The only warning in evidence is an email to the tenants dated July 3, 2022.

The landlord testified that additionally, he is seeking an Order of Possession because the tenants' kids have repeatedly damaged the common grounds of the subject rental property. The landlord testified that he received a petition signed by 22 owners of units in the same strata as the subject rental property asking the landlord to evict the tenants because the owners have witnessed the tenants' children damage the common grounds of the subject rental property. The above petition was entered into evidence.

The tenants testified that the landlord has not proved that their kids damaged the common grounds.

Analysis

Based on the testimony of both parties I find that service of the Notice was effected on the tenants on July 8, 2022, in accordance with section 88 of the *Act*. Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is August 31, 2022. I find that the corrected effective date of the Notice is August 31, 2022.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 (PG #38) 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.

Based on the undisputed testimony of the landlord and the e-transfer entered into evidence, I find that the tenants were late paying rent on 14 occasions, the last three of which were in January, May and July 2022, contrary to section 47(1)(b) of the *Act*. I find that three late payments within an eight-month period meets the definition of repeatedly late found in PG #38 and that the late payments are not far enough apart to avoid that definition.

The last late payment of rent was in July of 2022 and the landlord served the tenants with the Notice on July 8, 2022. I find that the landlord acted in a timely manner after the most recent late rent payment and therefore cannot be said to have waived reliance on this provision.

Both parties agreed that rent is due on the first day of every month, and the tenancy agreement states same. There is no provision in the tenancy agreement which provides the tenants with permission to pay rent after the first day of the month if there is a statutory holiday on or around the day rent is due. I find that the tenants’

misunderstanding of their obligation to pay rent on time, on the first day of each month, does not release them of their contractual (tenancy agreement) and statutory (section 26 of the Act) obligation to pay rent on the day it is due.

As I have determined that the tenants breached section 47(1)(b) of the *Act* and the landlord has not waived their reliance on this provision, I dismiss the tenants' application for dispute resolution without leave to reapply and I uphold the Notice. I find that the landlord is entitled to an Order of Possession effective September 30, 2022 at 1:00 p.m.

As I have determined that the landlord is entitled to an Order of Possession pursuant to section 47(1)(b) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession pursuant to any other subsection of section 47 of the *Act*.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2022**, which should be served on the tenants. 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: September 16, 2022

Residential Tenancy Branch