Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant seeks an order pursuant to s. 47 of the *Residential Tenancy Act* (the "*Act*") to cancel a One-Month Notice to End Tenancy signed on May 4, 2022 (the "One-Month Notice").

B.Y. appeared as the Landlord and was joined by her husband R.H. The Tenant did not appear, nor did someone appear on behalf of the Tenant.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that she was not served with the Notice of Dispute Resolution by the Tenant but had obtained notice of the hearing after contacting the Residential Tenancy Branch in June 2022. Despite not being properly served with the Notice of Dispute Resolution by the Tenant, the Landlord indicated that she was prepared to proceed with the hearing.

The Landlord advised that One-Month Notice was served on the Tenant via registered mail sent on May 4, 2022. The Landlord further stated that she served the One-Month Notice via email sent on the same date. I find that the One-Month Notice was served via

registered mail in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the One-Month Notice on May 9, 2022.

The Landlord advised that she served three photographs to the Tenant via email. The Landlord says that email is a method the parties have communicated but did not confirm the parties agreed to use email as a method of service. There was additional evidence provided to the Residential Tenancy Branch by the Landlord, which the Landlord acknowledges had not been served.

Rule 3.15 of the Rules of Procedure requires respondents to serve the evidence upon which they intend to rely on the applicants at least 7 days prior to the hearing. The requirement to serve the other side with the evidence they intend to rely on is a basic component of ensuring a procedurally fair process by enabling the other side to review the evidence and prepare for the hearing.

In this instance, the Landlord admits that much of its evidence was not served at all. Further, three photographs were served via email. Section 43 of the Regulations permits service via email but requires the parties to agree service via email beforehand. That does not appear to have been the case here.

As the Landlord has failed to serve much of its evidence, it is not included and shall not be considered by me. With respect to the photographs, I cannot make a finding that they were served in accordance with the *Act* as email does not appear to be an approved form of service. Accordingly, the photographs are not included and shall not be considered by me in these reasons.

Issues to be Decided

1) Should the One-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on February 1, 2019.
- Rent of $2,600.00 is due on the first day of each month.
- A security deposit of $1,300.00 was paid by the Tenant.

The Landlord confirmed the Tenant continues to reside in the rental unit. I am told by the Landlord that the rental unit is the main portion of the property and that there is a basement rental unit that is tenanted by someone else.

A copy of the One-Month Notice was provided to the Residential Tenancy Branch by the Tenant. It lists various causes for ending the tenancy, including the following:

- unreasonable number of occupants;
- repeated late rent payments;
- the tenant has
    - significantly interfered with or unreasonably disturbed another occupant or the landlord, and
    - put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has or is likely to
    - damage the landlord's property,
    - adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord, and
    - adversely jeopardize a lawful right or interest of another occupant or the landlord; and
- the tenant has caused extraordinary damage to the rental unit.

The Landlord testified that the Tenant failed to pay rent on the first as per the tenancy agreement for January, June, August, October, and November 2021 and January, June, July, August, and September 2022.

The Landlord and R.H. further testified that the Tenant operates an illegal business from the rental unit, namely the provision of escort-type services. R.H. testified to viewing an advertisement for the Tenant's business online that were of a sexual nature, including a photograph of the Tenant in suggestive clothing within the rental unit itself. The Landlord and R.H. further testified that they have received complaints from neighbouring property owners of people coming and going to the property at all hours of the evening. The Landlord testified that she did not agree to the Tenant operating a business from the rental unit and argues that the illegal business exposes her to liability.

The Landlord further raised issue with respect to garbage that has accumulated at the property. I am told the garbage has caused damage to the grass, led to rot on an adjacent fence, and some damage to the house itself. The Landlord further testified to a greenhouse being erected by the Tenant on the balcony of the rental unit without her consent. The Landlord says that she is concerned the balcony may not be able to hold the weight of the greenhouse and asked for the Tenant to obtain a professional to make that assessment. I am told the Tenant did not do so. The Landlord raised further complaint that the Tenant drove into the garage door at the property and did not repair the damage afterwards. Finally, I am told the Tenant has caused excessive wear and tear of the rental unit, including the repair of a washing machine 4 or 5 times during the tenancy.

Analysis

The Tenant applies to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. Pursuant to s. 47(4) of the *Act*, a tenant may file an application disputing the notice but must do so within 10 days of receiving it. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

I have reviewed the copy of the One-Month Notice provided to me by the Tenant and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Looking first at the issue of repeated late rent, a landlord may elect to end a tenancy on this basis under s. 47(1)(b) of the *Act*. Policy Guideline #38 provides guidance with respect to when a landlord may end a tenancy for the tenant's repeated late rent payments. It states the following:

> 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.
>
> Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

I accept the Landlord’s undisputed evidence that the Tenant failed to pay rent on the first of the month as follows: January 2021, June 2021, August 2021, October 2021, November 2021, January 2022, June 2022, July 2022, August 2022, and September 2022. I note that the late rent payments from June to September 2022 are not relevant to why the Landlord issued the One-Month Notice, which was signed and served in May 2022.

Based on the Landlord’s undisputed evidence, I find that the Tenant failed to pay rent on the first as required under the tenancy agreement and that they have been late paying rent at least three times prior to the One-Month Notice being served. I have considered whether waiver applies and find that the Landlord issued the One-Month Notice within a reasonable period after the last late rent payment of January 2022. Accordingly, I find that the Landlord has demonstrated that the One-Month Notice was properly issued under s. 47(1)(b) of the *Act*.

As the One-Month Notice was properly issued on the basis of repeated late rent payment, I dismiss the Tenant’s application to cancel the One-Month Notice. As the One-Month Notice was upheld on this basis, I do not consider the other grounds listed within the notice nor do I make any findings with respect to the Landlord’s allegations.

Section 55(1) of the *Act* provides that where a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the

landlord an order for possession. Given my findings above, I find that the Landlord is entitled to order of possession.

Conclusion

The Tenant's application to cancel the One-Month Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with 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 *Residential Tenancy Act*.

Dated: September 21, 2022

Residential Tenancy Branch