



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On April 25, 2022, the tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated April 25, 2022 (the One Month Notice);
- an order for the landlord to comply with the Act, regulation, or tenancy agreement; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed they received each other's respective materials.

Preliminary Matter

As the description for the tenants' claim for the landlord to comply with the Act, regulation, or tenancy agreement is regarding a rent increase, the same issue identified in their claim to dispute the One Month Notice, I dismiss without leave to reapply the tenants' claim for the landlord to comply with the Act, regulation, or tenancy agreement.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Are the tenants entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began June 1, 2021; is for a fixed term that was to end on May 31, 2022; rent is \$3,250.00, due on the first of the month, and the tenants paid a security deposit of \$3,200.00, which the landlord still holds.

The tenancy agreement is not on the [#RTB-1 form](#), and does not include the standard terms as found in the Schedule of the [Residential Tenancy Regulation](#) (the Regulation). The tenancy agreement does not specify what will happen at the end of the fixed term. The tenancy agreement states the landlord will provide one month's notice of a rent increase.

The landlord testified that the One Month Notice was served on the tenants on April 25, 2022 by attaching it to the door, and by email. The tenant testified they received the Notice by email on April 25, 2022.

A copy of the One Month Notice is submitted as evidence. It is signed and dated April 25, 2022 by the landlord, gives the address of the rental unit, states an effective date of May 31, 2022, and a reason is checked off indicating the reason for the Notice: the tenants are repeatedly late paying rent. The Details of the Event(s) section of the Notice is blank.

The landlord testified that when serving the One Month Notice by email, she provided the tenants with a supplementary email which explained that the Notice had been served as the tenants had paid rent late for January, February, March, and April 2022.

The tenant confirmed that the explanatory email was served along with the One Month Notice.

The landlord testified that the tenants paid rent late for January, February, March, and April 2022. The landlord submitted as evidence e-transfer emails demonstrating that a portion of the rent for January, February, and April 2022 was received on the 3rd of the month. An e-transfer email for March 2022 shows that a portion of the rent was paid on March 2. Also submitted as evidence are texts from the landlord on February 3, March 2, and April 3, 2022 in which the landlord is asking the tenant to send the remainder of the rent.

The landlord testified she would remind the tenants by text when rent was due, and that the tenant said they paid rent late due to a banking transaction limitation, which the landlord found odd, as she did not think that transaction limits changed, but the amount the tenants paid late did change.

The tenant testified that at the beginning of the tenancy they explained to the landlord that their bank allows them to transfer a maximum of \$2,500.00 every 24 hours, and that the landlord said it would not be a problem for them to pay the remainder of the rent a day or two late. The tenants did not provide evidence in support.

The tenant testified that the landlord wants to move them out to charge more rent. The tenant testified that in March 2022 the landlord said she wanted to raise the rent by \$350.00, which the tenants refused. The tenant testified that after that the landlord said the tenants had to pay all of their rent on time, breaking their agreement. The tenant testified that for the last four months, May through August, they have paid their rent on time or early, which the landlord confirmed. The landlord testified she had accepted the rent for use and occupancy only.

The landlord testified she "[has] no records" of an agreement with the tenants that they may pay rent late. When I asked the landlord if she had a conversation with the tenants in which it was agreed they could pay rent late, she stated "not that I can recall."

I asked the tenant when the alleged conversation took place. He said it was when they saw the landlord in person and got the key to the rental unit. The tenant testified that the landlord requested rent by e-transfer, the tenants explained their banking limitation, and the landlord said it would not be an issue.

When I asked the landlord if she recalled any of that, she said she did not.

I asked the landlord if she had a conversation with the tenants about increasing the rent by \$350.00, to which she replied, "not that I recall." When I asked the landlord to clarify her answer, she stated "I said 'not that I recall,' so, no."

Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenants on April 25, 2022, in accordance with section 88 of the Act, and that the tenants received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act; it is signed and dated by the landlord; gives the address of the rental unit; states an effective date; states the grounds for ending the tenancy, as it was accompanied by an email from the landlord providing further detail regarding the grounds; and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives it. As the tenants received the Notice on April 25, 2022 and applied to dispute it on the same day, I find the tenants met the 10-day deadline.

Rule 6.6 states:

6.6 The standard of proof and onus of proof

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 onus is on the landlord to prove the reason they wish to end the tenancy as indicated on the One Month Notice, that being that the tenants repeatedly paid rent late.

The landlord has provided testimony and supporting evidence demonstrating that in January, February, March, and April 2022, the tenants paid rent after the first of the month.

The tenant testified that at the beginning of the tenancy they reached an agreement with the landlord that it would be acceptable for them to be a day or two late paying the remainder of the rent, due to their banking limitations.

The tenant testified that the landlord served the One Month Notice only after they refused to agree to the landlord's proposed \$350.00 rent increase.

The landlord has provided affirmed testimony that she did not recall whether she had a conversation with the tenants in which it was agreed they could pay rent late. The landlord also testified that she did not recall whether she told the tenants she wanted to increase the rent by \$350.00.

As I find it highly unlikely that a landlord would not remember whether they had permitted late payment of rent, or discussed a substantial rent increase with their tenants, I question the landlord's credibility.

I note that the parties agree that after the service of the One Month Notice in April, the tenants paid their rent on time or early for May, June, July, and August 2022.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that "arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the [Act]," and that an analysis of a dispute must consider the "post-notice" conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act.

As the landlord's credibility has been called into question, and the parties agree that since the service of the One Month Notice the tenants have paid the rent on time, I find on a balance of probabilities that the landlord has failed to prove the reason for the One Month Notice, that being that the tenants are repeatedly late paying rent.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The parties agreed that the tenants paid a security deposit of \$3,200.00. The standard terms, which section 12 of the Act requires must be included in every tenancy agreement, include that the landlord agrees that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property. The standard terms also state that a landlord must give a tenant three whole months notice, in writing, of a rent increase. The standard terms state that “the landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy Branch for assistance.”

The tenancy agreement indicates the rent at the beginning of the tenancy was \$3,250.00. Therefore, the maximum allowable security deposit the landlord could charge was \$1,625.00, half of the monthly rent. I order the landlord to return the excess amount charged to the tenants in contravention of section 2 of the Regulation: \$1,575.00 (\$3,200.00 - \$1,625.00 = \$1,575.00).

I find the tenants are entitled to a monetary award of \$1,675.00, comprised of \$100.00 for the filing fee and \$1,575.00 for the excess security deposit charged. Therefore, the tenants may make a one-time deduction of \$1,675.00 from a future month's rent.

Conclusion

The tenants' application is granted.

The One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

The tenants may make a one-time deduction of \$1,675.00 from a future month's rent.

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 6, 2022

Residential Tenancy Branch