



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenants: CNC-MT, OLC, FFT
Landlord: OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The tenants confirmed receipt of the 1 Month Notice dated April 4, 2022, which was posted on the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 1 Month Notice on April 7, 2022, 3 days after posting.

Preliminary Issue—Tenants' Application for an Extension of Time to File Their Application for Dispute Resolution

The tenant filed their application for dispute on April 27, 2022 although the 1 Month Notice was deemed served on April 27, 2022. The tenants have the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenants testified that they attempted to file their application within the required time period at a Service BC office, but were refused. The tenants were informed that they had to file their application online, causing them to be delayed.

RTB Policy Guideline #36 clarifies the meaning of "exceptional circumstances" as "*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered 'exceptional' circumstances include...the party did not know the applicable law or procedure*".

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants have provided a compelling reason for the late filing of their application. Under these circumstances, I am allowing the tenants' application for more time to make their application.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This fixed-term tenancy began on July 15, 2021, with monthly rent set at \$1,500.00, payable on the first of the month. A rent increase came into effect on September 1, 2022, increasing the rent to \$1,522.50 per month. The landlord still holds a security deposit of \$750.00 for this tenancy.

On April 4, 2022, the landlord served the tenants with a 1 Month Notice for the following reasons:

1. The tenant is repeatedly late paying rent.
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenants has put the landlord's property at significant risk.

The landlord submits that the tenants were late paying rent on the following dates: August 2, 2021, November 3, 2021, January 4, 2022, February 3, 2022, and March 4, 2022. The landlord also submits that they have received numerous noise complaints from other tenants, and that the tenants have unreasonably disturbed the other tenants and put the landlord's property at significant risk.

The tenants do not dispute that they were late in paying their rent on the above referenced dates, but testified that they were suffering from financial hardship due to the pandemic as their employment was interrupted due to covid lockdowns. The tenants testified that they were waiting to receive their benefit payments in order to pay their rent.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants failed to file their

application within the required time period, but was granted an extension under 66 of the *Act*, as noted above. As the tenants were granted an extension, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

The landlord is seeking an Order of Possession due to repeated late payment of rent. The tenants do not dispute that their rent payments were late, but testified that this was due to extenuating circumstances.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

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...

In this case, I am satisfied that the tenants were late in paying their rent on at least three occasions within the last year. As set out in Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures, a landlord must give a tenant a repayment plan for rent that fell within the “affected rent” period of March 18, 2020 to August 17, 2020. In this case, I do not find that the late rent payments fell within this period. I find that the late rent payments qualify as repeated late rent payments for the purposes of the issuance of 1 Month Notice for Cause.

Section 26 of the *Act*, in part, states as follows:

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.

I am satisfied that the tenants were late paying their rent on at least three occasions, and did not have the right under the *Act* or tenancy agreement to do so. Although I sympathize with the fact that the tenants were experiencing significant financial hardship, the tenants did not have the authorization or permission to pay their rent late.

For these reasons, I find that the landlord has provided sufficient evidence to support that they have grounds to end the tenancy for repeated late rent payments. Accordingly, the tenants' application to cancel the 1 Month Notice is dismissed without leave to reapply.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary claim.

As I am not satisfied that the landlord has contravened the *Act*, the tenants' application for an order for the landlord to comply with the *Act* is dismissed without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply. I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary claim.

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 12, 2022