



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, RP**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs but they have not been completed pursuant to Section 32 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, the Property Manager (collectively, the "Landlord") and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by posting on May 24, 2022, Tenants confirmed receipt, deemed served on May 27, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package served by registered mail on June 12, 2022, Canada Post Tracking Number is noted on the

cover sheet of the decision, the Landlord confirmed receipt, deemed served on June 17, 2022;

- the Tenants' evidence package served by registered mail on September 26, 2022, Canada Post Tracking Number is noted on the cover sheet of the decision, the Landlord confirmed receipt, deemed served on October 1, 2022; and,
- the Landlord's evidence package served by registered mail on September 28, 2022, Canada Post Tracking Number is noted on the cover sheet of the decision, the Tenants confirmed receipt, deemed served on October 3, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the One Month Notice. The Tenants' other claim is dismissed with leave to re-apply depending on the outcome of this decision.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term ended on June 30, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,400.00 payable on the first day of each month. A security deposit of \$1,200.00 was collected at the start of the tenancy.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenants are repeatedly late paying rent. The effective date of the One Month Notice was June 30, 2022.

The Landlord provided further details of the causes to end this tenancy as:

August 2021 - \$383.00 paid on August 12th 2021
October 2021 - \$2400.00 paid on October 2nd 2021
November 2021 - \$2400.00 paid on November 3rd 2021
January 2022 - \$2400.00 paid on January 7th 2022
April 2022 - \$2400.00 paid on April 2nd 2022

Undisputed evidence between the parties is regarding the late rent payment in January 2022. The Tenants testified that it has only been one incident where their rent payment was late which occurred in January 2022. When they received their expected funds late from their employer, they immediately made a payment to the Landlord.

Tenants' evidence:

The Tenants said in August 2021, the Landlord gave their consent that the rent could be late due to a misunderstanding about the air conditioning in the rental unit. The Tenants uploaded two emails dated August 5, 2021 from the accounting department of the Landlord's property management company talking about the mix up with the understanding of the air conditioning unit and stating, "*I talked to [name] and my manager has agreed to you paying the difference of \$382 by thursday next week*". 'Thursday next week' was August 12, 2021.

The Tenants testified that their rent payments for October 1, 2021 and April 1, 2022 were submitted on the first of the month, but they were not aware they would be registered on the second of the month. The Tenants referred to an email dated December 1, 2021 from the property management company which outlines a current statement for the rent situation for the rental unit between September 1, 2021 to December 1, 2021. The Landlord explains in that email, "... *Subject to your bank's*

schedule for electronic fund transfers, your checking/savings account will be debited within one (1) business day."

On October 12, 2021, the Tenants stated they received an email from the property management company about changes to the way they would be able to accept rent payments. The Tenants argued that this did not allow them enough time to consider the changes and see if the system worked. On November 1, 2021, the Tenants stated they tried the new portal method for payment of rent, and it did not work for them. On November 3, 2021, the Tenants wrote the property management company about the difficulties they were experiencing using the online portal for payment of their rent. By end of the day, the Tenants had worked out the problems in the online portal and had paid their rent.

Landlord's evidence:

In August, shortly after the Tenants moved in, they thought air-conditioning was in their unit, but this service is only present in the common areas. The Landlord argued that the Tenants refused to pay their rent. The Landlord said they would give the Tenants \$200.00 towards partially paying for air-conditioning in their unit. On August 12, 2021, the Tenants paid the remainder of their rent.

In the Landlord's rental payment system, it notes the Tenants paid October's rent on October 2, 2021. The October rental payment was deposited in the Landlord's bank account on October 5, 2021.

After the new rental payment system was implemented mid October 2021. As opposed to the Tenants' evidence, the Landlord stated that there were no reported system issues with the new payment system. The Landlord testified to receiving over \$200,000 in rental payments on November 1, 2021. The Landlord stated that the Tenants did not contact them on the first that they were having difficulties using the new payment system. The Landlord said there were other ways the Tenants could have paid their rent on November 1, 2021 which included the old way of paying rent, bank deposit by etransfer or just using cash. The Landlord points out the Tenants did not provide evidence, e.g. screen shots of the errors they were receiving, proving they were having difficulties.

The Landlord uploaded a payment receipt for April 2022's rent. The received date was April 2, 2022.

The Landlord testified that the Tenants have not been given permission to withhold the rent.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act specifies the rules about payment of rent. It states, 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.

Section 47 of the Act outlines how a tenancy can end for cause:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(b) *the tenant is repeatedly late paying rent;*

...

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was deemed served on May 27, 2022. I find the One Month Notice complied with the form and content requirements of Section 52 of the Act.

The Tenants applied to dispute the One Month Notice on May 31, 2022 which was within the ten days after receiving the One Month Notice.

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation regarding repeatedly late rent payments. It 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.

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.

The Tenants were in a disagreement with the Landlord over whether air-conditioning was included in the rental unit at the time of paying for the August 2021 rent. The Landlord provided a \$200.00 concession and advised the Tenants they could pay the remainder owing on August 12, 2022. The Tenants did this. I do not find that the Tenants were strictly late with their rent payment in this month.

The Tenants said they paid their October rent on time, and the lateness was a result of banking processes. However, the Landlord's rental payment system reports they paid their October 2021 rent on the second of that month. I find the Tenants paid their October 2021 rent on October 2, and they paid their April 2022 rent on April 2, 2022.

When a new payment method was incorporated by the Landlord's accounting department, the Tenants submitted they had difficulties navigating this system. The Tenants uploaded email communications with the Landlord about these difficulties. The Landlord submits that many other of their tenants had no difficulty using the new system, and anyways, the Tenants were not restricted to just using the new system for rent payments. The Landlord testified that the Tenants did not notify them on November 1, 2021 that they were having difficulties with the new payment method. I find the Tenants had other options to pay their rent and should have utilized these options. I find the Tenants were late paying rent in November 2021.

It is an undisputed fact that the Tenants were late paying their rent in January 2022.

In total, I find the Tenants were late paying rent for the months of October 2021, November 2021, January 2022, and April 2022. The Act is clear, rent must be paid when it is due under the tenancy agreement. I find there have been four occasions when rent was late. Based on a balance of probabilities, I find this is sufficient, according to Policy Guideline #38, that the Tenants have been repeatedly late paying rent and the Landlord has proven cause to end this tenancy. Accordingly, I dismiss the Tenants' application for dispute resolution to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenants' application is unsuccessful, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

Order of possession for the landlord

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I previously found that the One Month Notice complies with Section 52 of the Act, and I uphold the Landlord's One Month Notice. Pursuant to Section 55(1) of the Act, I grant

an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenants.

Conclusion

The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme 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: October 28, 2022

Residential Tenancy Branch