



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, RP, FFT, OPC, MNRL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On June 6, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 6, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on October 20, 2022.

A.P. attended the hearing as the owner/Landlord, with K.P. and C.P. attending as agents for the Landlord; however, the Tenant did not attend the hearing at any point during the 34-minute teleconference. R.C. and B.P. attended the hearing later as witnesses for the Landlord. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:34 AM. Only representatives for the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had

been provided in the Notice of Hearing. I also confirmed from the teleconference system that representatives for the Landlord were the only other persons who had called into this teleconference.

As the Tenant did not attend the hearing, the Tenant's Application is dismissed without leave to reapply.

K.P. advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by being posted to his door on July 21, 2022, and she referenced the proof of service document submitted to corroborate service. Based on this undisputed evidence, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Landlord is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a recover the filing fee?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and K.P. advised that the tenancy started on October 9, 2020, that rent was currently established in the amount of \$1,268.75 per month, and that it was due on the first day of each month. A security deposit of \$625.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence for consideration.

K.P. testified that the Notice was served to the Tenant by hand on May 25, 2022, and that the Tenant signed to confirm that he received it. She also referenced the proof of service form that was submitted as documentary evidence to corroborate service. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent". The effective end date of the tenancy was noted as June 30, 2022, on the Notice.

The copy of the Notice that was submitted as documentary evidence for consideration was not signed by the Landlord, which is a requirement of Section 52 of the Act. K.P. solemnly affirmed that she signed the Notice before serving it to the Tenant, and that the copy of the Notice submitted to the Residential Tenancy Branch was unsigned because that was simply the printed out copy of the Notice.

The Landlord provided his solemnly affirmed testimony that corroborated K.P.'s testimony of this Notice being signed prior to being served to the Tenant.

Witness R.C. was called into the hearing to provide his solemnly affirmed testimony because he witnessed K.P. serve this Notice to the Tenant. However, R.C. testified that he never looked at the Notice prior to it being served. He was directed to exit the hearing after providing this testimony.

Witness B.P. was then called into the hearing to provide his solemnly affirmed testimony because he also witnessed K.P. serve this Notice to the Tenant. He initially testified that he looked at this Notice prior to witnessing K.P. serve it on the Tenant, and he submitted that this Notice was signed. He then clarified his testimony and stated that he had signed it. When he was questioned further on whether this Notice was signed and who it was signed by, he then provided extremely delayed responses when he had not done so earlier. He was cautioned to answer from his memory and was directed not to be influenced by any other parties. He then claimed that he had trouble understanding my questions due to his difficulty with the English language; however, he exhibited no difficulties in answering any questions prior to this point. He eventually confirmed his solemnly affirmed testimony that he reviewed this Notice prior to K.P. serving it to the Tenant, and that this Notice was signed by K.P. He was directed to exit the hearing after providing this testimony.

While I find B.P.'s wavering, varying, and inconsistent testimony to be somewhat dubious, and while I am suspicious that the reason for his delayed responses was possibly due to him being directed to provide specific testimony in regards to this issue, ultimately, he solemnly affirmed that this Notice was signed by K.P. prior to being served to the Tenant.

The Landlord, K.P., and C.P. were cautioned that providing false testimony during this hearing would constitute fraud. It was emphasized to them that if they solemnly affirmed that this Notice was signed by K.P. prior to being served to the Tenant, but the Tenant had evidence that it was not signed at all, this would be considered fraudulent

testimony. The Tenant would be able to apply for Review Consideration should a Decision go against him based on falsified testimony. They acknowledged that they understood the consequences of providing fraudulent testimony, and they confirmed that this Notice was signed by K.P. prior to being served by the Tenant.

With respect to the reason the Notice was served, the Landlord and K.P. advised that the Tenant paid rent late on multiple occasions. They referenced three 10 Day Notices to End Tenancy for Unpaid Rent that were served on January 4, 2022, April 6, 2022, and May 6, 2022, to demonstrate three of the many instances of repeated late payment of rents. These notices were submitted as documentary evidence for consideration.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice served to the Tenant on May 25, 2022, I note that while the copy of the Notice submitted to the Residential Tenancy Branch was not signed, the Landlord, K.P., and B.P. all provided solemnly affirmed testimony that K.P. signed this Notice prior to serving it to the Tenant. As such, in reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;

In addition, I note that the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy when the Tenant is repeatedly late paying rent:

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

Section 26(1) of the *Act* establishes that “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.”

The undisputed testimony from the Landlord and K.P., despite the tenancy agreement not indicating inasmuch, is that the Tenant was required to pay all of the rent by the first day of each month. Furthermore, rent was not paid in full on the first day of each month more than three times prior to service of the Notice. As such, I am satisfied that there were at least three instances of late payment of rent, which precipitated service of the Notice.

As there is no evidence before me permitting the Tenant to pay the rent late, contrary to the solemnly affirmed testimony of the Landlord and K.P. that rent was due on the first day of each month, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2022 after service of this Order** on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt.

Conclusion

The Tenant’s Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective at **1:00 PM on October 31, 2022 after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant 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: October 20, 2022

Residential Tenancy Branch