



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, FFT, CNC**

Introduction

This hearing dealt with the Tenant's 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;
2. An Order to suspend or set conditions on the Landlords' right to enter the rental unit pursuant to Section 70 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, DC, COC, KP, and the Tenant 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.

The Landlords served the Tenant with the One Month Notice on February 18, 2022 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on February 21, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that he served the Landlords both of his Notice of Dispute Resolution Proceeding packages (the "NoDRP packages") for this hearing by emailing

them and advising them he had packages for them to pick up at his door. The Landlords confirmed picking up the first package but waited for him to serve them properly with the second package. He did not properly serve the Landlords.

Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations (e.g.: by email).

As the Tenant did not serve the Landlords with his NoDRP package in the proper way, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected for either file and it would be administratively unfair to proceed on the Tenant's applications against the Landlords. I dismiss all of the Tenant's claims without leave to re-apply.

The Landlords served the Tenant with their evidence on September 9, 2022 by posting the package on the Tenant's door. The Tenant confirms receipt of the Landlord's

evidence package. I find that the Landlords' evidence package was deemed served on the Tenant on September 12, 2022 according to Sections 88(g) and 90(c) of the Act.

Issues to be Decided

1. Are the Landlords 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 Tenant testified that he began his tenancy in this rental unit in 2015. The Landlords stated they bought the house in January 2021 with the Tenant in residence. Monthly rent is \$964.00 payable on the first day of each month. A security deposit of \$300.00 is held by the Landlords for this rental unit.

The One Month Notice stated the reason the Landlords were ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was March 31, 2022.

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.

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;*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (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.*
- (5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit by that date.*

The Landlords' One Month Notice was deemed served on February 21, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. I previously dismissed the Tenant's applications, but I note that both applications for dispute resolution were filed beyond the 10 days after receiving the One Month Notice. I find effectively the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice.

The Landlords' evidence is that the Tenant is repeatedly late paying rent. The Landlords' bank statement information supports that the Tenant has been late paying rent since April 2021 seven times. I find that the Landlords' One Month Notice is support that they have not waived reliance on RTB Policy Guideline #38-Repeated Late Payment of Rent. I uphold the Landlords' notice.

I must consider if the Landlords are entitled to an Order of Possession. Section 55 of the Act reads as follows:

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 to the landlord an order of possession of the rental unit if*
- (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 have upheld the Landlords' One Month Notice and I find the Landlords are entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlords must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in 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 Act.

Dated: October 05, 2022

Residential Tenancy Branch