



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On May 31, 2022, the tenant applied for an order to cancel a One Month Notice to End Tenancy for Cause, dated May 26, 2022 (the One Month Notice).

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 landlord confirmed she received the tenant's Notice of Dispute Resolution Proceeding (NDRP), and the tenant confirmed receipt of the landlords' responsive evidence.

Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, are the landlords entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2020; rent is \$1,950.00, due on the first of the month, and the tenant paid a security deposit, of \$975.00, which the landlords still hold.

The landlord testified that the One Month Notice was served on the tenant in person on an unknown date; the tenant confirmed receipt of the Notice, but also did not know the date on which he received it.

A copy of the One Month Notice was submitted as evidence. It is signed and dated May 26, 2022 by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated for the One Month Notice is that the tenant is repeatedly late paying rent. I could not read the Details of the Events section, as it was completed using a very small font, and page 2 of the Notice was submitted as a blurry photo.

The landlord testified that the Details of the Events section stated that the tenant paid rent late for the following months:

- March 2021
- April 2021
- May 2021
- June 2021
- July 2021
- August 2021
- October 2021
- November 2021
- December 2021
- January 2022
- February 2022
- April 2022
- May 2022

The landlord submitted as evidence text messages with the tenant which record her demands for late rent, and the tenant's responses.

The landlord testified that the tenant has not been late with rent since May 2022.

The tenant testified that he recognized he was sometimes late with rent, and submitted that his rent payments had been impacted by the pandemic and by his customers not paying him promptly.

Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenant in person, on an unknown date.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, 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 the Notice. As the Notice is dated May 26, 2022 and the tenant applied to dispute it on May 31, 2022, I find the tenant 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 tenant is repeatedly late paying rent.

[Policy Guideline](#) 38. *Repeated Late Payment of Rent* provides that three late payments are the minimum number sufficient to justify a notice to end tenancy.

The landlord has provided testimony and supporting evidence demonstrating that the tenant has been repeatedly late in paying rent.

The tenant testified that his ability to pay rent on time was impacted earlier in the pandemic by customers being slow to pay him.

The landlord testified that the tenant has not been late with rent since May 2022, the month the One Month Notice was served.

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 has testified that since the service of the One Month Notice the tenant has 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 tenant is 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.

Conclusion

The tenant’s application is granted; the tenancy will continue until it is ended in accordance with the Act.

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 12, 2022

Residential Tenancy Branch