



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes CNC OPC FFL

Introduction

The tenant sought an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) while the landlord sought an order of possession based on the Notice. The landlord also sought to recover the cost of the application filing fee.

Pursuant to the *Residential Tenancy Act* (the “Act”) a dispute resolution hearing was convened on October 18, 2022 at 11:00 AM by way of teleconference. Only an agent for the landlord attended the hearing, which ended at 11:10 AM; the tenant did not attend. The agent testified that they served copies of the landlord’s evidence upon the tenant.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on June 1, 2019. Monthly rent is \$800.00, and it is due on the first day of the month. The tenant paid a \$400.00 security deposit. The tenancy agreement was an oral tenancy agreement.

On May 22, 2022 the landlord served the Notice upon the tenant by attaching the Notice to the door of the rental unit. There is in evidence a copy of proof of service. The date of service is mirrored in the tenant’s application. A copy of the Notice is in evidence.

One of the two reasons why the Notice was issued was that the tenant was repeatedly late paying rent. (The other reason was under subsection 47(1)(e) of the Act, for which I shall not go into.) The landlord's agent testified that the tenant was late paying rent in January, February, March, April, and May 2022.

Since mid-May 2022 the tenant has also not paid any rent. The agent confirmed they are not seeking a monetary order for unpaid rent but understand that they reserve the right to file an application for dispute resolution seeking compensation if they so decide.

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. When a tenant disputes a notice to end a tenancy the onus shifts to the landlord to prove the reason why they issued the notice to end tenancy.

In this dispute, the Notice was issued pursuant to section 47(1)(b) of the Act because "the tenant is repeatedly late paying rent". The undisputed facts in this case are such that the tenant was repeatedly late paying rent over a continuous period of 5 months.

Taking into consideration all of the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they issued a notice to end the tenancy on the basis that the tenant repeatedly paid rent late, which is a reason to end a tenancy under section 47(1)(b) of the Act.

Therefore, the tenant's application to cancel the notice is dismissed, the landlord's Notice is upheld, and the landlord is granted an order of possession pursuant to section 55(1) of the Act.

A copy of the order of possession is issued to the landlord in conjunction with this Decision. The landlord must serve a copy of the order of possession on the tenant and the tenant, from the date that they receive or are deemed to receive the order of possession must vacate the rental unit within two days.

If the tenant fails to vacate the rental unit as ordered by the order of possession, then the landlord may enforce the order in the Supreme Court of British Columbia.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the landlord succeeded in their application the tenant is ordered pay the landlord \$100.00.

The landlord is, pursuant to section 38(4)(b) of the Act, authorized and ordered to retain \$100.00 of the tenant's security deposit to pay for the above-noted award.

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. the tenant's application is dismissed, without leave to reapply.**
- 2. the landlord's application is granted in its entirety.**
- 3. the landlord be granted an order of possession, which must be served on the tenant. The tenant must vacate the rental unit within two (2) days of being served with the order of possession.**

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 18, 2022

Residential Tenancy Branch