



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The current lease began on January 1, 2015. Prior to that the tenant was in a lease with a co-tenant at this same unit. The current monthly rent is \$1137.75 payable on the 1st day of each month.

The landlord served the tenant with the One Month Notice on July 31, 2022 on the grounds that the tenant is repeatedly late paying rent.

The landlord provided examples of text message correspondence dating back to January 2022. The text messages reflect the tenant was late paying rent by a number of days in January, March, April and July 2022. After the One Month Notice was issued

to the tenant in July 2022, the tenant was also late paying rent by over 14 days for the months of August and September 2022. The landlord testified that in the previous year the tenant had also been issued 10 Day Notices on at least two occasions after which the tenant would finally make rent payments. The landlord testified that this has been an ongoing issue and the tenant has been given numerous opportunities to start paying rent on time.

The tenant did not dispute rent was paid late on numerous occasions. The tenant testified that mobility was an issue for him due to a medical condition. The tenant testified that this affected his work and his ability to drop off the physical rent payments to the landlord.

In reply, the landlord submits the tenant is not required to travel to pay his rent and that it could have been done through post-dated cheques or e-transfer.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

I accept the landlord's testimony and supporting evidence that rent was paid late on at least a minimum of three occasions dating back to January 2022. I accept the text message correspondence submitted by the landlord to be an accurate and credible reflection of the actual dates of rent payments made by the tenant. Even after receiving

the One Month Notice in July 2022, the tenant continued to be late with his rent payments. I find this illustrates the tenant did not take the matter seriously. The tenant failed to provide any evidence in support of the medical condition which affected his mobility. Irrespective, I find the tenant could have availed himself of paying the rent by other means as suggested by the landlord.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of repeated late payments. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant(s) 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: November 01, 2022

Residential Tenancy Branch