



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") to dispute a One Month Notice to End Tenancy for Cause dated August 2, 2022 (the "One Month Notice") pursuant to section 47.

The Landlord, the Landlord's agent RW, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents for dispute resolution. The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package, amendment application, and evidence. The Tenant acknowledged receipt of the Landlord's evidence. Based on the foregoing, I find the Landlord was served with the Tenant's documents in accordance with sections 88 and 89 of the Act. I find the Tenant was served with the Landlord's documents in accordance with section 88 of the Act.

Preliminary Matter – Amendment of Tenant's Application

The Tenant's application initially indicated that she was disputing a two month notice to end tenancy for landlord's use. I have reviewed the application materials and confirmed with the parties that there is no two month notice to end tenancy. The parties agreed

that the Tenant is disputing a one month notice to end tenancy for cause. Based on the parties' testimonies and pursuant to section 64(3)(c) of the Act, I have amended the Tenant's application accordingly.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on November 15, 2015 and is month-to-month. Rent is currently \$1,248.00 due on the first day of each month. The Tenant paid a security deposit and a pet damage deposit of \$600.00 each. A copy of the tenancy agreement has been submitted into evidence.

A copy of the One Month Notice is also submitted into evidence. The effective date is September 30, 2022. The copy submitted is unsigned; however, the Landlord testified that he signed the copy of the One Month Notice that was given to the Tenant. It states the reason for issuing the notice is that the Tenant is repeatedly late paying rent, and includes the following additional details of cause:

The tenant has been repeatedly late paying the full amount of the rent by the 1st of the month since 2018. We served her with a 10-day eviction notice on February 15, 2022 (for Feb. rent), March 4, 2022 (for Mar. rent), April 3, 2022 (for Apr. rent), and July 3, 2022 (for July rent). The Tenant was unable to pay the full rent for August, 2022 on August 1 (but has since paid the balance today – Aug. 2).

The Landlord explained that the Tenant is on disability, so the Landlord receives \$600.00 per month from the ministry directly. The Landlord stated that the balance of the rent comes from the Tenant in "trickles", requiring the Landlord to process multiple payments, some of which are in cash and some via e-transfer. The Landlord stated he

would like to receive rent on the first day of the month as that is what the parties had agreed to.

The Landlord referred to a record of the Tenant's payment submitted into evidence. This record shows the Tenant paid rent as follows:

- October 2021 rent was paid by October 11, 2022 over six installments
- November 2021 rent was paid by November 5, 2021 over three installments
- December 2021 rent was paid on time (advance installments were received in November 2021)
- January 2022 rent was paid by January 6, 2022
- February 2022 rent was paid by February 17, 2022 over five installments
- March 2022 rent was paid by March 3, 2022 over two installments
- April 2022 rent was paid by April 7, 2022 over four installments
- May 2022 rent was paid by May 2, 2022 over three installments
- June 2002 rent was paid in advance by May 27, 2022
- July 2022 rent was paid by July 25, 2022 over four installments
- August 2022 rent was paid by August 2, 2022 over two installments
- September rent was paid in advance by August 25, 2022 over four installments
- Partial e-transfer and cash payments for October 2022 rent were received on October 1, 2022

The Landlord testified that the Tenant paid the balance for October 2022 rent on November 1, 2022 and has made a partial payment towards November 2022 rent. The Landlord testified that as of the date of this hearing, the Tenant owes \$874.00 for November 2022 rent.

The Landlord submitted partially redacted bank statements showing e-transfers received from the Tenant and deposits for cash and ministry cheques. The Landlord also submitted copies of 10 day notices to end tenancy for unpaid rent dated February 15, 2022, March 4, 2022, April 3, 2022, and July 3, 2022.

The Landlord testified there have been many other attempts to politely ask the Tenant to try harder to pay the rent on time, but the late payments still happen over and over.

In response, the Tenant stated she did not receive 10 day notices on some of the dates that the Landlord says she was late paying rent. The Tenant testified that her father passed away this year. The Tenant testified she paid rent ahead in May and June 2022. The Tenant stated she disputes having been late so many times this year.

The Tenant testified the Landlord did not provide receipts for rent paid in cash. The Tenant argued that the Landlord should not be going by dates that he goes to the bank to deposit rent. When questioned, the Tenant was unable to confirm the dates on which she had paid rent.

The Tenant testified she has four cats and three dogs, and that it is not easy to find a new place with pets.

The Tenant submitted a handwritten letter in which she wrote that “there is no way to prove if [the Tenant] was late with the rent because [the Tenant] has never received a rent receipt”. This letter states that “any time [the Tenant] was late and received an eviction notice [the Tenant] paid the remaining rent before or by the 5 day period on the form”. This letter also states the Tenant is “behind now because [the Landlord] went or called the ministry and had the rent cheque stopped”.

In reply, the Landlord confirmed his record does show the times when the Tenant has been ahead with the rent. The Landlord explained that his record for cash payments is not based on the bank deposit dates, but is based on the parties’ text message correspondence regarding when the Landlord can pick up the rent. The Landlord testified he informed the ministry that he had served a notice to end tenancy for the end of September as he was concerned about receiving rent even though the Tenant is not there.

The Landlord stated that if this case is decided in his favour, he is willing to extend the effective date of the One Month Notice to December 31, 2022.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month’s notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (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.

In this case, I have reviewed a copy of the One Month Notice and accept the Landlord's testimony that he signed the copy which was given to the Tenant. I find the One Month Notice otherwise complies with the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice in person on August 2, 2022, in accordance with section 88(a) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until August 12, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on August 12, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47(1)(b) of the Act states 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; [...]

Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent further explains as follows:

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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the Landlord's bank statements which show the Tenant's e-transfers and the Landlord's record which shows the dates and amounts for cash payments received, I am satisfied on a balance of probabilities that the Tenant did not pay rent in full by the due date for the months of October and November 2021, as well as January, February, March, April, May, July, and August 2022.

I find that while the Landlord would have received \$600.00 per month in advance from the ministry, the Tenant paid her portion of the rent in various amounts throughout the month, with no predictable pattern as to the timing or amounts paid on each occasion. I

find the Tenant did not dispute that she paid rent in such installments. I find that this method of paying the rent resulted in the Tenant being mostly late with rent payments, since the full amount due was not received by the first day of the month. I find that this method also resulted in the Tenant being occasionally ahead with rent (for example, June and September 2022), and that this is reflected in the Landlord's record. I find in 2022, prior to the issuance of the One Month Notice, the Tenant was late paying rent a total of seven times (January to August 2022, except June 2022).

Based on the copies submitted into evidence by the Landlord and the Tenant's acknowledgement in her letter, I find the Landlord issued multiple 10 day notices to end tenancy to the Tenant. I accept the Landlord's testimony that he had tried to communicate with the Tenant many times about this problem. I find the Landlord acted in a timely manner to serve the One Month Notice when rent was again late for the month of August 2022.

Based on the foregoing, I conclude the Tenant has been "repeatedly late paying rent". I am therefore satisfied that the Landlord has proven, on a balance of probabilities, cause for ending the tenancy under section 47(1)(b) of the Act.

The Tenant's application to dispute the One Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession states:

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

In this case, I accept the Tenant will need more time to move out of the rental unit at this time of the year, and also due to the fact that she has pets. Based on the Landlord's willingness to extend the effective date of the One Month Notice to December 31, 2022, I grant the Landlord an Order of Possession effective 1:00 pm on December 31, 2022.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on December 31, 2022**. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 18, 2022

Residential Tenancy Branch