



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC, DRI-ARI-C, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on October 25, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a One Month Notice to End Tenancy for Cause dated October 23, 2022 (the One Month Notice);
- an order disputing an additional rent increase for capital expenditures; and
- an order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Tenant attended the hearing. The Landlord attended the hearing and was accompanied by MM, a witness. All in attendance provided affirmed testimony.

The Tenant testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by WhatsApp. The Landlord testified that only a picture of a telephone access code was received but that no evidence was included. The Tenant did not dispute this assertion. Therefore, I find I am not satisfied the Landlord was served with the Notice of Dispute Resolution Proceeding package in accordance with section 89 of the Act. The documentary evidence submitted to the Residential Tenancy Branch Dispute Management System by the Tenant has not been considered. However, as the Landlord was present and prepared to proceed, and bears the burden of providing evidence in support of the One Month Notice, I proceeded with the application.

On behalf of the Landlord, MM testified that a documentary evidence package was served on the Tenant by registered mail on November 28, 2022. Copies of Canada Post registered mail receipts were submitted in support. Pursuant to sections 88 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 3, 2022.

Further, MM testified that a second documentary evidence package was served on the Tenant by attaching a copy to the Tenant's door on December 1, 2022. A photograph depicting envelopes attached to a door were submitted in support. Pursuant to sections 88 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on December 4, 2022.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue is whether or not the tenancy will continue. Accordingly, the parties were advised that I would be exercising my discretion to dismiss the Tenant's requests for orders disputing an additional rent increase for capital expenditures and suspending or setting conditions on the Landlord's right to enter the rental unit with leave to reapply as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. If not, is the Landlord entitled to an order of possession by operation of section 55(1) of the Act?

Background and Evidence

The parties agreed the tenancy began on April 1, 2021. Although the parties agreed rent is due on the first day of each month, they did not agree with respect to the amount of rent due. The Tenant testified that \$1,400.00 is due each month. The Landlord testified that \$1,600.00 is due each month, but acknowledged it was temporarily reduced to \$1,400.00 per month on May 1 and June 1, 2021, at the request of the Tenant. Further, I note the tenancy agreement submitted into evidence and the Tenant's application differ with respect to the amount of the security deposit paid, it appears a security deposit was nevertheless paid.

The Landlord testified the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on October 23, 2022. The Tenant acknowledged receipt on that date. The One Month Notice is signed and dated, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified the Tenant has been repeatedly late paying rent. The Landlord submitted a spreadsheet which described late payments in 2021 and 2022. Payments made in 2022 are summarized as follows:

Rent due date	Rent payment date	Rent paid
Jan 1/22	Jan 10/22	\$400.00
Mar 1/22	Mar 7/22	\$1,400.00
	Mar 9/22	\$1,000.00
Apr 1/22	Apr 5/22	\$1,000.00
	Apr 6/22	\$500.00
May 1/22	May 4/22	\$1,500.00
Jun 1/22	Jun 4/22	\$1,000.00
	Jun 7/22	\$700.00
Jul 1/22	Jul 2/22	\$1,000.00
Aug 1/22	Aug 2/22	\$1,000.00
	Aug 4/22	\$600.00
Sep 1/22	Sep 6/22	\$1,700.00
Oct 1/22	Oct 6/22	\$1,700.00
Nov 1/22	Nov 16/22	\$1,400.00

The amount of rent paid and the date of each payment described above was presented to the Tenant. The Tenant agreed the payments were made as described in the Landlord's spreadsheet. The only discrepancy was for rent due for February 2022. In that case, the Tenant testified that \$2,000.00 was paid in cash but was unable to recall the date of payment.

Considering my findings below, it has not been necessary for me to consider the other bases for ending the tenancy as set out in the One Month Notice.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(1) of the Act permits a landlord to take steps to end a tenancy when a tenant is repeatedly late paying rent.

Further, Policy Guideline #38 provides assistance when determining if a tenant has been repeatedly late paying rent. It states:

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.

In this case, I find there is sufficient evidence before me to conclude that the Tenant has been repeatedly late paying rent. Indeed, the Tenant's own testimony acknowledged that rent payments were made after the first day of each month in all but one month in 2022. Accordingly, I uphold the One Month Notice on the basis of repeated late rent payments. The Tenant's request for an order cancelling the One Month Notice is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession to the landlord. The language in the Act is mandatory. Having reviewed the One Month Notice, I find it complies with section 52 of the Act. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Conclusion

The Tenant's request for an order cancelling the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. 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 Residential Tenancy Act.

Dated: December 13, 2022

Residential Tenancy Branch