



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord make repairs to the rental unit or property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by the tenant's partner and an Advocate for support. The landlord's agent and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 16, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 22, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$975.00 was payable on the 1st day of each month, which has been increased and is now \$1,054.94 per month, and the landlord's agent is not sure if there are currently any rental arrears. Copies of the tenancy agreement and notices of rent increase have been provided as evidence for this hearing. On April 29, 2017 the landlord collected a security deposit from the tenant in the amount of \$487.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse in a complex, and the landlord does not reside on the property.

The first Notice of Rent Increase is dated February 16, 2018 and shows that the current rent of \$975.00 is increased by \$39.00 and that new rent will be \$1,014.00 effective June 1, 2018. The second Notice of Rent Increase provided by the landlord shows that effective June 1, 2019 rent is increased by \$25.35 to \$1,039.35. The final Notice of Rent Increase provided by the landlord is dated September 8, 2021 and increases the rent by \$15.59 to \$1,054.94 effective January 1, 2022. The landlord's agent testified that as of July, 2022 arrears were \$116.58 and from August on, the tenant has paid rent in full. A Tenant Ledger has also been provided for this hearing, showing that late fees of \$25.00 have been applied for the months of January and April, and May, and June and July.

The landlord's agent further testified that on August 16, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause, and a copy has been provided by the tenant and by the landlord for this hearing. It is dated August 16, 2022 and contains an effective date of vacancy of September 30, 2022. It was placed in the tenant's mailbox by a property manager on August 16, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent.

On August 22, 2022 the landlord served another One Month Notice to End Tenancy for Cause by placing it in the tenant's mailbox, and a copy has been provided by the tenant for this hearing. It is dated August 22, 2022 and contains an effective date of vacancy of September 30, 2022. The landlord's agent does not know why it was issued.

The landlord's agent also testified that the landlord's understanding is that if rent is short, it is deemed late. Throughout the year the tenant has been late, and a copy of a Tenant Ledger has been provided for this hearing running from January 1 to July 2 but

does not specify which year. The tenant was late with full rent in January, April and May, 2022. Copies of e-transfers in the amount of \$1,050.00 each has been provided for this hearing dated April 1, 2022; May 2, 2022; June 1, 2022; and June 30, 2022.

The landlord has also provided a copy of a letter dated January 20, 2022 to the residents that the increase for January's rent in the amount of \$15.59 was not received, and a \$25.00 late fee had been applied.

On November 30, 2022 a letter was sent to tenants stating that there's a new offer from the government for Clean Rebates for heat pumps, and the landlord pays for it after the rebate. If a tenant is under a certain income, they don't pay. The gas was deemed unsafe by a plumber and was cut off for safety. On November 17, 2022 the property manager bought a special type of heater for the tenant because the tenant's son has special needs. On November 8, 2022 the landlord bought oil heaters for other tenants. The landlord is in the process of rectifying the heating issue; tenants have to complete a form and an assistant of the landlord has offered to help people fill out or email the forms. The landlord's agent doesn't know if the tenant has filled out the forms or handed them in. The landlord's agent does not know how much time it will take and the landlord cannot fill out the paperwork for the tenant. The tenant has to fill out the paperwork and hand it in to the government, then the landlord will get the go-ahead. On November 30, 2022 a letter was sent to all tenants explaining the step-by-step procedure of how to go about it; the letter was placed in everyone's mailboxes.

A heater was provided to the tenant on November 17, 2022 and regular heaters were offered to tenants on November 8, 2022 but the tenant declined.

The tenant testified that the tenant had been in a relationship with the maintenance person of the landlord. The maintenance man got abusive and the tenant obtained a Protection order.

The tenant suffers from dyslexia and when the tenant went to pay the rent, the numbers were mixed up. The rent increase was for January 1, 2022.

The tenant has resided in the rental unit for 5 years and always paid rent on time. However on August 8, 2021 a rent increase was given and due to dyslexia, the tenant paid the previous amount. On August 16, 2022 the maintenance man served a notice to end the tenancy but rent had been paid on time. The tenant sent an email about the difference, but received no response from the landlord.

Then the tenant received another notice to end the tenancy on August 22, 2022 for late rent. It didn't say what the tenant owed, but the tenant was short \$4.94 from April to August, for a total of \$260.00. The tenant paid that amount on August 25, 2022 and according to the tenant's math, the tenant has overpaid by \$143.42.

If the landlord had served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant would have paid the amount on the form, but the landlord didn't do so. The tenant paid what the tenant thought was the full amount, and the landlord accepted it each month and now claims that the tenant paid late. The tenant disputes both notices to end the tenancy, and testified that there was no clear communication, and the tenant was not told what was owed. The tenant tried to work with the landlord, but no one replied to the tenant's emails. The tenant went to talk to the landlord's agents in person, who didn't want to talk about it, saying it will be dealt with at Arbitration, and the tenant is confused.

The tenant also referred to Residential Tenancy Policy Guideline #38 which states, in part, that a minimum of 3 late payments is required to end a tenancy for repeated late rent. It also states that: "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."

The tenant also testified that "estoppel" applies, and has provided copies of automatic deposits dated April 1, 2022; May 2, 2022; June 1, 2022; June 30, 2022; all in the amount of \$1,050.00.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

In this case, there are 2 notices to end the tenancy, which the tenant has disputed.

The law states that a notice to end a tenancy given by a landlord must be in the approved form. I have reviewed both notices, and I find that the one signed and dated August 16, 2022 is in the approved form.

I find that the One Month Notice to End Tenancy for Cause dated August 22, 2022 is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute, however the landlord's agent does not know why it was issued. Therefore, I cancel it.

I have also reviewed the Tenant Ledger provided by the landlord and the Notices of Rent Increase.

The tenant's position is that "estoppel" applies, which is a doctrine that has been considered by the Supreme Court of British Columbia:

Guevara vs. Louie 2020 BCSC 380, considered in a Judicial Review proceeding involving late payment of rent and a notice to end the tenancy, and whether the landlord was estopped from enforcing a notice to end the tenancy by her past conduct. The tenant in that case paid the landlord by e-transfer. Some were late, but the landlord accepted it without complaint but with friendly reminders by the landlord.

The Court stated that ending a tenancy is a significant request only in accordance with the *Residential Tenancy Act*, and if disputed, an Arbitrator is required to consider the totality of the evidence. The Court also mentioned Policy Guideline 38 – Repeated Late Payment of Rent, which must be considered but would be a legal failure by an Arbitrator to properly consider the statutory interpretation of Section 47 without considering the entire circumstances given the context in which Section 47 (1)(b) finds itself. The Court also stated that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant eviction, and an Arbitrator is to consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The Supreme Court also found that by not considering estoppel, the Arbitrator committed an error. It also stated that "The distinction between waiver and estoppel is vital because the landlord relies on alleged defaults that occurred before she gave any indication that the required strict compliance with the requirement to pay rent on the first of the month." Such a notice would have had to be clear. The landlord was required to give the tenant reasonable notice that strict compliance would be

enforced before taking steps to end the tenancy for late payments, and in this case, no such notice was provided to the tenants.

The tenant testified that the tenant sent emails to the landlord about the balance that may have been due but received no response from the landlord. The tenant also testified that the tenant attempted to speak with an agent of the landlord, but the landlord's agents refused to discuss it because the matter was scheduled for a hearing.

In this case, the landlord has not established that the landlord gave the tenant reasonable notice that strict compliance would be enforced before taking steps to end the tenancy for late payments. Therefore, I cancel both One Month Notices to End Tenancy for Cause and the tenancy continues.

The tenant also questioned the landlord's agent about why the onus is on the tenant to fill out forms for the government before the landlord will repair the heat. That is contrary to the law, and I order that, with or without the forms, the landlord must repair the heat, and I order that the heat be repaired by December 31, 2022.

The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement. A landlord must make repairs to a rental unit within a reasonable time, and I order the landlord to comply. The tenant did not raise any other issues during the hearing.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it by serving the landlord with the order, and filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment. Alternatively, if there are rental arrears, the \$100.00 may be applied to outstanding rent.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 16, 2022 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated August 22, 2022 is hereby cancelled and the tenancy continues.

I hereby order the landlord to repair the heat to the rental unit by December 31, 2022.

I hereby order the landlord to comply with the *Act* by making repairs to the rental unit when required, and in a timely manner.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it. Alternatively, if there are rental arrears currently, the arrears may be reduced by that amount.

This order is final and binding and may be enforced.

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 22, 2022

Residential Tenancy Branch