



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of the:

- Landlord's One Month Notice served by registered mail and received on July 20, 2022 as confirmed by the Tenant;
- Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on July 28, 2022, tracking number is copied on the cover sheet of this decision, the Landlord confirms receipt, deemed served on August 2, 2022; and,

- Landlord's evidence package was emailed to the Tenant on December 12, 2022, the Tenant confirmed receipt, I find the Landlord's evidence package was sufficiently served to the Tenant on December 12, 2022.

Pursuant to Sections 71, 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that she purchased the home in 2014. The parties confirmed that this periodic tenancy began on November 1, 2014. Monthly rent is \$1,390.55 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was August 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

LATE PAYMENT OF RENT

RENT is due on the 1st of each month – payments below were late.

July 4 / 2022

Dec 3 / 2021

June 3 / 2022

June 3 / 2021

May 3 / 2022

July 2 / 2021

March 2 / 2021

The Landlord has issued several 10 Day Notices to end tenancy on the Tenant, but the Tenant has paid her rent within the 5-day window to nullify the notices. The Landlord

stated she received dismissive responses from the Tenant about her late rent payments. The Landlord stated that she cannot operate with repeatedly late rent payments, she has her own financial commitments to meet. She is not interested in settling this matter and seeks an Order of Possession.

The Tenant said she has been a stellar tenant. There were no problems until her and the other renter complained about some housing issues – leaking washer, cleaning outside windows – now the Landlord wants to throw her out onto the street. The Tenant said she had some surgeries that resulted in some late payments from her, the Tenant admitted to being late paying rent one time because she forgot as her work agenda was too demanding.

The Tenant said if it was an issue last year, the Landlord should have said something sooner. The Tenant said she could have made different arrangements to fix the problem.

The Landlord, after talking to Information Officers at the RTB, said she waited to see if there was a continual pattern of late rent payments.

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

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act outlines how a tenancy can end for 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;*

...

- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord served the One Month Notice on July 20, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on July 28, 2022 which is within 10 days after receiving the One Month Notice.

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. 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.

The Tenant has been late paying rent 7 times in the last 12 months. The Landlord has served several 10 Day Notices for Unpaid Rent on the Tenant in this time period. The Landlord served the One Month Notice after the last late rent payment in July 2022. The Tenant has not provided sufficient reasons to allow her to be late paying rent. I find that the Tenant has been late over the requisite number of months to constitute being repeatedly late paying rent. The Landlord has proven her claim on a balance of probabilities, and I uphold her One Month Notice. The Tenant's application to cancel the Landlord's One Month Notice is dismissed without leave to re-apply.

As the Tenant's application is unsuccessful, Section 55 of the Act specifies how the Landlord is entitled to an Order of Possession:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. As I have dismissed the Tenant's application and upheld the Landlord's One Month Notice, I grant an Order of Possession to the Landlord which will be effective on December 31, 2022 at 1:00 p.m.

The Tenant did not provide submissions on what part of the Act, regulation or tenancy agreement the Landlord is breaching. I decline to make an Order for the Landlord to comply with the Act, regulation or tenancy agreement.

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

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

The Landlord is granted an Order of Possession which will be effective on December 31, 2022 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: December 16, 2022

Residential Tenancy Branch