



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On September 14, 2022, the tenants applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 4, 2022 (the 10 Day Notice);
- an order to cancel a One Month Notice to End Tenancy for Cause, dated September 11, 2022 (the One Month Notice); and
- an order for repairs made to the unit or property, having contacted the landlord in writing.

The hearing was attended by the landlord but not the tenants. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served his responsive evidence on the tenants by putting it in the mailbox on January 24, 2022. Pursuant to section 90(d) of the Act, I deem the landlord's evidence received by the tenants on January 27, 2022. As Rule 3.15 states that the respondent's evidence must be received by the applicant not less than seven days before the hearing, I will not consider the landlord's documentary evidence.

The landlord testified he was not sure whether the tenants still reside in the rental unit.

Preliminary Matters

As the landlord testified that after service of the 10 Day Notice the tenants paid the rent owing within five days, I find the 10 Day Notice is cancelled.

Considering the One Month Notice, Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Therefore, though the tenants did not attend the hearing to dispute the One Month Notice, the landlord bears the evidentiary burden to prove the Notice is valid. As such, I must assess the validity of the One Month Notice.

As the tenants did not attend the hearing, I dismiss, without leave to reapply, their application for repairs made to the unit or property.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began July 1, 2022, for a fixed term to end June 30, 2023; rent is \$2,000.00, due on the first day of the month; and the tenants paid a security deposit of \$1,000.00, and a pet damage deposit of \$600.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence, and notes that rent is due on the first day of the month.

A copy of the One Month Notice was submitted as evidence. The landlord testified he served the One Month Notice on the tenants in person on September 11, 2022.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reasons for ending the tenancy, and is in the approved form. The reasons indicated on the One Month Notice are:

- the tenant is repeatedly late paying rent; and
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The Details of the Events section of the One Month Notice states that the tenants did not pay rent on time for July, August, or September, and that the tenants removed the "smoke/fire alarm."

The landlord testified that the tenants were late paying rent for the following five months of 2022: July, August, September, October, and November. The landlord testified the tenants did not pay rent in December 2022 or January 2023, as of the hearing.

Analysis

Based on the affirmed undisputed testimony of the landlord, I find the landlord served the tenants the One Month Notice on September 11, 2022, in accordance with section 88 of the Act, and that the tenants received it on the same day.

As it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for the Notice, and is in the approved form, I find the One Month Notice meets the form and content requirements of section 52 of the Act.

The One Month Notice was received by the tenants on September 11, 2022. Therefore, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: September 21, 2022. As the tenants applied to dispute the One Month Notice on September 14, 2022, I find they applied within the deadline.

Section 47(1)(b) of the Act states that a landlord may give notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Tenancy Policy Guideline [38. Repeated Late Payment of Rent](#) states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act.

I accept the landlord's affirmed undisputed testimony that the tenants paid rent late in 2022 for the five months of July, August, September, October, and November; and that the tenants did not pay rent in December 2022 or January 2023, as of the hearing.

As Policy Guideline 38. states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act, and the tenants paid rent late, or not at all, seven times in seven months, I find that the landlord is entitled to an order of possession pursuant to section 47(1)(b) of the Act.

Conclusion

The tenants' application is dismissed; the One Month Notice is upheld.

The landlord is granted an order of possession which will be effective two days after it is served on the tenants. The order of possession must be served on the tenants. The order of possession 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: January 30, 2023

Residential Tenancy Branch