



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- disputing a One Month Notice to End Tenancy for Cause dated November 15, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord's agent MZ attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 9:41 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that MZ and I were the only ones who had called into the hearing.

I informed MZ that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Landlord

This application initially named Sutton Group 1st West Realty ("Sutton Group") as the sole respondent and landlord. However, both the tenancy agreement and the One Month Notice state that the landlord is XHM. The evidence suggests that Sutton Group is XHM's agent and property management company. MZ confirmed she is representing

XHM, the owner of the rental unit. As such, I have amended this application to name XHM as the Landlord instead of Sutton Group.

Preliminary Matter – Service of Dispute Resolution Documents

MZ confirmed receipt of the Tenant's notice of dispute resolution proceeding package and evidence (collectively, the "NDRP Package"). I find the Landlord was sufficiently served with the NDRP Package pursuant to section 71(2)(c) of the Act.

MZ testified that the Landlord's documentary evidence was sent to the Tenant via registered mail on December 14, 2022. MZ provided a tracking number in support (referenced on the cover page of this decision). I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the Landlord's evidence on December 19, 2022.

Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant did not attend this hearing for the Tenant's own application while the Landlord's agent duly attended. As such, I directed that the hearing continue in the absence of the Tenant.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on November 1, 2018 and is month-to-month. Rent is currently \$2,537.00 due on the first day of each month. The Tenant paid a security

deposit of \$1,250.00. A copy of the tenancy agreement has been submitted into evidence.

A copy of the One Month Notice is also submitted into evidence. It is signed by JY on behalf of the Landlord and has an effective date of December 31, 2022. It states the reason for issuing the notice is that the Tenant is repeatedly late paying rent. The Tenant's application indicates that the Tenant received a copy of the One Month Notice attached to the door on November 16, 2022.

MZ testified that the Tenant pays rent via e-transfer. MZ testified that the Tenant started being late with rent payments in 2019. MZ testified that they would call, text, or email the Tenant with warnings and the Tenant would pay the overdue rent.

MZ stated that in 2020, the Tenant started to ignore their communications, so the Landlord issued several 10 day notices to end tenancy for unpaid rent since that time. MZ stated that the Tenant would pay the overdue rent within 5 days of receiving such notices. MZ testified that this situation happened many times. MZ referred to copies of 10 day notices included in the Landlord's evidence, which are dated October 7, 2020, October 6, 2021, November 18, 2021, September 7, 2022, October 4, 2022, and November 3, 2022.

MZ stated the Tenant gave excuses and promised the rent would be on time, but kept being late. MZ testified that there were occasions where the Tenant paid while they were in the process of preparing a 10 day notice to end tenancy for unpaid rent. MZ testified the Landlord was unwilling to let the situation continue, so the Landlord instructed MZ to issue the One Month Notice.

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 the One Month Notice and find that it complies the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant's application indicates the Tenant received a copy of the One Month Notice on November 16, 2022, which had been posted to the Tenant's door. As such, I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(g) of the Act on November 16, 2022.

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 November 26, 2022 to dispute the One Month Notice.

I note that according to the definition of "days" in the Rules of Procedure:

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not

open during regular business hours, the time is extended to the next day that the office is open.”

As November 26, 2022 was a Saturday and the Residential Tenancy Branch was closed, I find the Tenant’s deadline could have been extended to Monday, November 28, 2022.

However, records of the Residential Tenancy Branch indicate that the Tenant made this application on Tuesday, November 29, 2022. Therefore, I conclude the Tenant did not make this application within the 10-day dispute period required by section 47(4) of the Act. The Tenant also did not apply for more time to dispute the One Month Notice under section 66 of the Act and did not participate in this hearing to explain why this application was late.

Section 47(5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the foregoing, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on December 31, 2022, the effective date of the One Month Notice. Accordingly, I dismiss the Tenant’s claim to dispute the One Month Notice without leave to re-apply.

I note in any event I am prepared to find the Tenant has been “repeatedly late paying rent” within the meaning of section 47(1)(b) of the Act. I am satisfied based on the Landlord’s undisputed evidence that the Tenant did not pay rent on time for the months of September, October, and November 2022, which led the Landlord to issue 10 day notices to end tenancy for each of those months. I accept the Tenant was also late on other occasions in 2021 and 2020, as shown by the other 10 day notices submitted into evidence. Overall, I am prepared to find the Tenant was late paying rent at least three times in 2022 alone. I find the Landlord acted in a timely manner to issue the One Month Notice following these most recent late payments.

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.

I conclude the One Month Notice should be upheld and the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Since the effective date of the One Month Notice has already passed, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in disputing the One Month Notice. I decline to award the Tenant recovery of the filing fee under section 72 of the Act.

Conclusion

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

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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: January 06, 2023

Residential Tenancy Branch