



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated August 23, 2022. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that they received a documentary evidence package from the Landlord.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matter – *Tenant’s evidence*

At the outset of these proceedings, it was noted that the Tenant had served their evidence package to the Residential Tenancy Branch (RTB) on January 20, 2023, the same date as these proceedings.

Sections 3.1 and 3.14 of the Residential Tenancy Branches Rules of Procedure state the following regarding the service of evidence:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

“3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.”

The Tenant was asked to speak to why their evidence package had been severed to the RTB late and to testify as to how and when they served their evidence package to the Landlord.

The Tenant testified that they had served the documents included in their evidence package to the RTB late due to lack of time. The Tenant also testified that they had not served their evidence package for these processing to the Landlord.

I accept the testimony of the Tenant that they did not serve the Landlord with the evidence package that I have before me in these proceedings.

As the Responded, the Landlord was not served with the Tenant's evidence package, in accordance with the rules of procedure, I will not consider the Tenant's documentary evidence in my final decision for these proceedings.

Issues to be Decided

- Should the Notice dated August 23, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy agreement recorded that this tenancy began on January 1, 2019, as a one-year fixed-term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed-term. The Tenant recorded the monthly rent in the amount of \$5,582.50 on their application for these proceedings and the Landlord testified that the monthly rent is \$5,382.00, no explanation of this discrepancy was provided by either party during these proceedings. Both parties agreed that the rent is to be paid by the first day of each month and that the Landlord collected a security deposit of \$2,750.00 and at the outset of this tenancy. Both the Landlord and the Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on August 23, 2022, by email service to the Tenant. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenant must move out of the rental unit by September 23, 2022. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant filed to dispute the Notice on August 31, 2022.

The Landlord testified that the Tenant had been late in paying their rent three times in the last year, in June, July, and August 2022, when they issued the Notice. The Landlord also testified that the Tenant paid the rent late in November 2022 and January 2023, after receiving the Notice and filing for these proceedings.

The Tenant testified that they agreed with the Landlord, that their rent had been paid late in June, July, and August 2022, but that it was due to a banking restriction. The Tenant testified that they had been paying their rent by e-transfer and that due to a daily limit on that service, they had to spread their payments out.

The Landlord testified that due to the number of times that the Tenant has been late in paying the rent, they are seeking to end the tenancy. The Landlord requested an Order of Possession to enforce their Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice on August 26, 2022, three days after it was emailed to them, pursuant to the deeming provisions set out in section 90 of the Act. Pursuant to section 47 of the *Act*, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Therefore, I find the Tenant had until September 5, 2022, to file their application to dispute this Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on September 2, 2022, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

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 this case, I accept the sworn testimony of both parties that the Tenant has paid their rent late three times in the last twelve months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord. Consequently, I dismiss the Tenant’s application to cancel the Notice dated August 23, 2022.

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 have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to their requested Order of Possession effective two days after service on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application to cancel the Notice, dated August 23, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective two days after service on the Tenant. Should the Tenant fail to comply with this Order, this Order 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 20, 2023

Residential Tenancy Branch