



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 an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by an agent BA, while the tenant was represented by tenant KF. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated August 26, 2022 with an effective date of September 30, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced October 1, 2020 on a month to month basis. Rent was \$995.00 per month due on the first of the month. The landlord holds a security deposit of \$487.50 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that the One Month Notice was served due to a history of late rent payments by the tenant. The landlord served the tenant with 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notice") on the following dates:

- April 19, 2022;
- June 17, 2022;
- July 4, 2022;
- July 7, 2022;
- August 3, 2022;

The landlord stated that in some instances rent wasn't paid because the rent cheques given by the tenant were NSF. The landlord did not enforce the 10 Day Notices but instead served a One Month Notice as there was a pattern of unpaid rent. The tenant was also late with rent in January 2023.

The tenant gave landlord postdated cheques and didn't initially notice that her cheque for February 2022 rent was NSF. The landlord cashed the cheque later than the first of the month and the tenant's account no longer contained sufficient funds. In May 2022 the rent payment was taken out by the landlord later than the first day of the month and again there were insufficient funds in the tenant's account. The tenant went camping in August 2022 and her phone wasn't working so she wasn't able to e-transfer the rent to the landlord. In every case when she received a 10 Day Notice she paid the rent within five days of receiving the notice, however her July rent was also NSF when she paid it pursuant to the 10 Day Notice she received July 4, 2022. In January 2023 she had a family emergency and was unable to pay the rent on time.

Analysis

RTB Rules of Procedure 6.6 states, "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 tenants apply to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenants.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. The tenant in this instance was not withholding rent but was not paying rent on the first of the month as required under the terms of the tenancy agreement.

Based on the undisputed evidence of the parties, the tenant had a pattern of late rent payments from February 2022 until the one Month Notice was served on August 26, 2022 and was late again with rent in January 2023. The tenant’s rent was late on five occasions prompting the landlord to serve a 10 Day Notice on each occasion. While the tenant was paying rent within the five-day timeframe under section 45 of the Act after receiving the 10 Day Notices, she was still consistently late paying rent. Her cheques were NSF on several occasions.

It is the tenant’s responsibility to ensure she has enough funds in her account to pay rent. I find that the tenant was repeatedly late paying rent. I therefore dismiss her dispute application.

I find that the One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant’s application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective January 31, 2023 at 1:00pm.

As the tenant was unsuccessful in her application, she is not entitled to recover the filing fee for the application.

Conclusion

The landlord is granted an order of possession which will be effective January 31, 2023. The order of possession must be served on the tenant. The order of possession may be filed in 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