



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 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, 2023, and to recover the filing fee for this application. The matter was set for a conference call.

Both 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.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require 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.

Issues to be Decided

- Should the Notice dated August 23, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

Both parties agreed that the tenancy began on April 1, 2018, as a one-year fixed-term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed-term. Rent in the amount of \$1,850.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$925.00 and at the outset of this tenancy. The Landlord 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 24, 2023, by personal 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 30, 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 has been late in paying their rent three times in the last year, in March, April, and August 2022.

The Tenant testified that they agreed with the Landlord, that their rent was paid late in March, April, and August 2022, but that it was due to travel and banking issues that they could not control.

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, with an effective date of March 31, 2023.

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 24, 2022 and filed their application to dispute the Notice on August 30, 2022. 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, the first business day after the time limit expired, 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 August 31, 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 his 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 not later than 1:00 p.m. on March 31, 2023. 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 is recoverable from the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

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 not later than 1:00 p.m. on March 31, 2023. 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 19, 2023

Residential Tenancy Branch