



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on October 11, 2022, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on October 3, 2022 (the "Notice"), an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement, as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on January 23, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Parties' Names

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenants misspelled the Landlords' surname. The Tenants also included their adult son, M.T., on the Application as a Tenant. A review of the tenancy agreement confirms the Landlords' surname as well as the names of the Tenants.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* I amend the Tenants' Application for Dispute Resolution to accurately name the Landlords and the Tenants.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenants' Application concluded on January 23, 2023. This Decision was rendered on February 27, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to an Order that the Landlords comply with the *Act*, *Regulations*, and/or tenancy agreement?
3. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlords presented their evidence first.

The Landlord, S.C., testified as follows. She confirmed this tenancy began February 2022. Monthly rent is \$2,500.00 and was raised to \$2,600.00 when the Tenant's son, M.T., moved into the rental unit. This increase was permitted by paragraph 5 of the Addendum to the tenancy agreement.

The Notice was issued on October 3, 2022. The reasons the Landlords issued the Notice is that the Tenants were repeatedly late paying rent; in this respect S.C. testified the Tenants paid rent as follows:

- February 2022; a portion was paid \$2,300.00 on 1st and \$200.00 more on the 2nd;
- May 2022: paid on the 2nd;
- August 2022: paid on 5th;
- October 2022: paid on 2nd;
- November 2022: paid on 7th
- January 2023: partial payment of \$1,250.00 on the 2nd; and \$1,350.00 on 4th; and \$25.00 late fee on the 6th

D.P. stated that when the Tenants were late paying their rent they immediately contacted the Tenants about their rent and informed them that their tenancy was in jeopardy. The Landlords issued a 10 Day Notice to End Tenancy in May of 2022. On August 2, 2022 D.P. sent a text and an email to the Tenants about their rent and then she posted a caution letter to the rental unit on August 11, 2022. The Landlords also issued the second 10 Day Notice in August. The Landlord provided proof of the Notices as well as the warning letter in their evidence. D.P. stated that they also warned the Tenants verbally about their late payment of rent.

D.P. confirmed that when the Tennats were late paying their October rent, they issued the 1 Month Notice on October 3, 2022 by posting to the rental unit door on October 3, 2022. The Landlord took a photo of this and provided a copy of this in evidence.

D.P. confirmed that the Landlords also a total of four 10 Day Notice to End tenancy for Unpaid Rent or Utilities on May 2022, August 2022, November 2022 and January 2023.

In response to the Landlords' testimony the Tenant, D.P., testified as follows.

In terms of the February 2022 rent, the Tenant stated that she understood the rent was \$2,300.00 per month and \$200.00 for the garage. She alleged that this was a verbal agreement and noted that the security deposit was only \$1,150.00.

In terms of the May 2022 rent, the Tenant stated that she was not sure why the rent was late, except that she phoned them and gave them the heads up that they were waiting for a cheque to clear.

In terms of the August 2022 rent, the Tenant stated that August was a long weekend and S.D. could not get to the bank because the bank machines were closed.

The Tenant confirmed that they received the text message, email and notice on the door in August confirming that continued late payment would result in an end to their tenancy.

In terms of the October 2022 rent, the Tenant claimed that she sent the rent payment on time, but the Landlord did not accept the funds until 12:07 a.m. and at that time the Landlord issued the Notice.

In terms of the November 2022 rent the Tenant stated she could not recall why rent was late on that date. The Tenant denied receiving a 10 Day Notice for November 2022.

In terms of the January 2023 rent the Tenant stated that she paid the rent in two separate installments and the late fee. The Tenant again stated that January 1, 2023 is a holiday and as a result they did not have the ability to transfer the funds at that time.

S.D. also testified. He stated that the bank was closed on the 1st and the 2nd of January 2023 and he offered to pay the Landlord cash on January 3rd. S.D. stated that the Landlord would not accept the cash and did not have a receipt.

S.C. denied that they refused to accept cash. She stated that she asked the Tenant if he had the full amount in cash and he said he didn't.

In terms of the October payment, S.C. stated that they received the rent on October 2 at 12:07 a.m. and issued the Notice at that time.

Analysis

The Landlords seek to end the tenancy for cause pursuant to section 47(1)(b) of the *Act*, which allows a landlord to end a tenancy when the tenant has been repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline 38 provides that three late payments are sufficient to end a tenancy for cause. The evidence before me confirms these Tenants have been late paying their rent six times in their one year tenancy.

In a recent decision of the B.C. Supreme Court in *Guevera v. Louie* 2020 BCSC 380, the Honourable Mr. Justice Sewell dealt with a Judicial Review of a Decision of the Residential Tenancy Branch on the issue of repeated late payment of rent. As with the present case, the Tenant in the *Guevera* case had been late paying rent many times during the tenancy. The Court held that three late payments is insufficient to end a tenancy for cause as consideration must be given to the conduct of the parties. In particular, the Court found that:

“...However, the real issue before [the original Arbitrator] was whether Ms Louie was estopped from enforcing a provision of the tenancy agreement by her past conduct. That issue required a determination of whether Ms. Louie’s conduct led Ms. Guevara to conclude that e-transferring the rent within a day or two after the first of the month was acceptable to her. Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.

In this case I find the Landlords warned the Tenants that their tenancy was in jeopardy in August of 2022, upon the third late payment. At that time the Landlords also issued the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the first being issued in May of 2022. The Tenants were then late paying their October, November

and January rent. The Landlords issued two further 10 Day Notices to End Tenancy in November and January. I find the Landlords were clear with the Tenants that the Landlords expected strict compliance with the tenancy agreement in terms of the timing of rent payments and did not offer any leniency to the Tenants.

I therefore find that the Landlords have proven the reasons for issuing the Notice. I find the Tenants have been repeatedly late paying rent such that the Landlords are entitled to an end to this tenancy pursuant to the Notice.

Section 55 of the *Residential Tenancy Act* provides as follows:

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 and confirm it complies with section 52 of the *Act*. As I have dismissed the Tenants' Application, I grant the Landlords an Order of Possession effective **two days** after service upon the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

As the tenancy is ending I dismiss the Tenants' request for an Order that the Landlord comply with the *Act*, *Regulations*, and/or tenancy agreement.

Having been unsuccessful in their Application the Tenants are not entitled to recover the filing fee; consequently that claim is also dismissed.

Conclusion

The Tenants request for an Order canceling the Notice is dismissed without leave to reapply.

The Landlords are entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*.

Tenants' request for an Order that the Landlord comply with the *Act, Regulations*, and/or tenancy agreement is dismissed without leave to reapply.

The Tenants request to recover the filing fee is dismissed without leave to reapply.

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: February 27, 2023

Residential Tenancy Branch