



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 pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and two agents for the landlord, agent "K.Z." and agent "P.L." (the "agents"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issues- Service

Both parties agree that the tenant served the landlord with the Notice of Dispute Resolution Proceeding in person on October 21, 2022. The agents testified that the tenant did not serve the landlord with the RTB fact sheet or the Respondent Instructions

sheet as required. The agents testified that despite the above documents not being served, the landlord was prepared to continue with this hearing.

Section 3.1 of the Residential Tenancy Branch Rules of Proceeding states:

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 or within a different period specified by the director, serve each respondent with copies 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].

I find that the tenant failed to serve the landlord with all of the documents listed in Rule 3.1; however, the tenant did serve the Notice of Dispute Resolution Proceeding document which advised the landlord of the tenant's claims. As the landlord is a corporate landlord and likely had knowledge of the contents of the missing documents and confirmed their willingness to proceed with this hearing in absence of the missing documents, I find that this hearing will proceed on its merits.

The tenant did not upload for consideration any evidence other than the first page of the Notice of Dispute Resolution Proceeding.

The agents testified that the tenant was served with the landlord's evidence via registered mail on January 19, 2023. The tenant confirmed that she received the landlord's evidence but could not recall on what date. I find that the tenant was deemed

served with the landlord's evidence on January 24, 2023, five days after its registered mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment

The agents testified that the city of the subject rental property listed in the tenant's application for dispute resolution is incorrect. The agents provided the correct city of the subject rental property. The tenant agreed that the city provided as the correct city by the agents was correct.

Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to state the correct city of the subject rental property.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2015. Monthly rent in the amount of \$1,181.00 is payable on the first day of each month. A written tenancy agreement signed by both parties was entered into evidence.

The agents testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the "Notice") via registered mail on October 5, 2022. The tenant testified that she received the Notice on October 6, 2022. The tenant filed to dispute the Notice on October 6, 2022.

The Notice was entered into evidence, is signed by the landlord, is dated October 5, 2022, gives the address of the rental unit, states that the effect date of the notice is November 30, 2022, is in the approved form, #RTB-33, and states the following ground for ending the tenancy:

- Tenant is repeatedly late paying rent.

The agents testified that the tenant was repeatedly late paying rent throughout her tenancy and that the landlord informed the tenant via a letter dated February 7, 2022 that rent was due on the first day of each month and that this is a material term of the tenancy agreement. The February 7, 2022 letter was entered into evidence.

The agents testified that after the February 7, 2022 warning letter regarding late payment of rent, the tenant was late paying rent for the following months in 2022:

- April,
- May,
- July, and
- October.

The landlord entered into evidence a ledger which confirms that rent for the above listed months was paid late.

The tenant testified that she has been late paying rent but always pays the late fee. The tenant testified that she always tells the caretaker when she is going to be late on rent and that he never had a problem with it.

The tenant testified that after she was served with the Notice she set up pre-authorized payments and has not been late paying rent since October 2022.

Both parties agree that the tenant is up to date on rent payments and has paid rent for February 2023. The agents testified that since the Notice was served, receipts for use and occupancy only have been provided to the tenant. This was not disputed by the tenant.

Analysis

Based on the testimony of both parties, I find that service of the Notice was effected on the tenant on October 6, 2022, in accordance with section 88 of the Act.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that 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.

I find that the landlord made it patently clear to the tenant in the February 7, 2022 letter, that payment of rent was to occur by the first day of every month and that this term of the tenancy agreement was considered a material term by the landlord. I find that despite any previous history of late rent payment, the tenant was put on notice that further late rent payments would not be tolerated and the landlord cannot be said to have waived reliance on that term of the tenancy agreement.

I find that the tenant was late paying rent in April, May, July and October of 2022. Pursuant to Residential Tenancy Policy Guideline 38, I find that the aforementioned late payments constitute repeated late payment of rent. I find that pursuant to section 47(1)(b) of the *Act*, the landlord was entitled to end the tenancy for repeated late payment of rent. I therefore uphold the Notice and dismiss the tenant's application for dispute resolution.

Section 55(1) of the *Act* states that 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.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

I find that since the Notice complies with section 52 of the *Act* and the tenant's application to cancel the Notice was dismissed and the Notice was upheld, the landlord is entitled to a two-day Order of Possession.

As the tenant was unsuccessful in this application for dispute resolution, I find that the tenant is not entitled to recover the filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of 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: February 23, 2023

Residential Tenancy Branch