



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Now Canada Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On November 4, 2022, the tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated October 27, 2022 (the One Month Notice); and
- an order for the landlord to comply with the Act, regulation, or tenancy agreement.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed with leave to reapply the tenants' claim for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began August 15, 2021; rent is \$720.00, due on the first of the month; and the tenants paid a security deposit of \$372.50, and a pet damage deposit of \$372.50, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified they served the One Month Notice on the tenants by posting it to the door on October 28, 2022; the tenant testified that she received it on the same day.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates:

- the tenant is repeatedly late paying rent;
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The Details of the Events section of the One Month Notice states that the tenant has paid rent late six times since moving in in August 2021, and describes an October 27, 2022 incident involving the tenant.

Submitted as evidence is a copy of the tenant ledger. It notes that the tenant was late paying rent for the following months:

- November 2021
- January 2022
- March 2022
- April 2022
- May 2022
- August 2022
- October 2022

- January 2023
- March 2023

The landlord testified that rent has not been paid yet for March 2023.

The tenant did not dispute the landlord's testimony on rent payments.

The tenant testified that she usually let the landlord know in advance when her rent would be late. The tenant testified that she began paying rent in cash, but that the office where she had to make her payment had unpredictable hours and sometimes closed early, impacting the timing of her rent payments.

The tenant testified that last year she became very ill, has been in and out of hospital, and that as a result of her illness, her doctor said she has been designated as having a disability. The tenant testified that her ill health resulted in her losing her job.

The parties provide additional testimony regarding the October 2022 incident.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the testimony of the parties, I find the landlord served the tenants the One Month Notice on October 28, 2022, in accordance with section 88 of the Act, that the tenants received it on the same day. I find the tenants applied to dispute the Notice within the deadline set out by section 47(4) of the Act.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for the Notice, and is in the approved form,

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

Residential Tenancy Policy Guideline [38. Repeated Late Payment of Rent](#) states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act.

The landlord testified that the tenant has paid rent late nine times from November 2021 to March 2023 and submitted as evidence the tenant ledger in support. The landlord testified that rent has not been paid for March 2023. The tenant did not dispute the landlord's testimony on rent payments.

As Policy Guideline 38. states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act, and the tenant has paid rent late nine times since November 2021, I find that the landlord is entitled to an order of possession pursuant to section 47(1)(b) of the Act.

As the tenancy is ending, I find it unnecessary to consider the remaining reasons on the One Month Notice.

The effective date on the One Month Notice is November 30, 2022. [Policy Guideline 54. Ending a Tenancy: Orders of Possession](#) notes that when an order of possession is being granted relating to a notice to end tenancy heard after the effective date, orders of possession are generally set for two days after the order is received. The Guideline states that there are other factors an arbitrator may consider when determining the effective date of an order of possession, including if the tenant provides evidence that it would be unreasonable to vacate the property in two days. The Guideline give the example of a tenant who provides evidence of "a disability or a chronic health condition."

The tenant testified that her ongoing serious health condition has resulted in her being designated as having a disability.

Therefore, considering the tenant's health challenges, rather than granting the landlord an order of possession effective two days after it is received by the tenant, I order that this tenancy will end on March 31, 2023 at 1:00 p.m.

Conclusion

The landlord's application is granted; the One Month Notice is upheld.

The landlord is granted an order of possession which will be effective on March 31, 2023 at 1:00 p.m. The order of possession must be served on the tenants. The order of possession 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: March 17, 2023

Residential Tenancy Branch