



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's two Applications for Dispute Resolution ("Applications") under the *Residential Tenancy Act* ("Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated October 15, 2022 ("One Month Notice");
- for an Order for the Landlord to Comply with the Act or tenancy agreement;
- to cancel a Two Month Notice to End the Tenancy for Landlord's Use, dated November 5, 2022 ("Two Month Notice"); and
- for recovery of their two \$100.00 Application filing fees.

The Tenant, his agent, S.S. ("T-Agent"), the Landlord, and her agent, B.W. ("L-Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. The Tenant's daughter, L.M. also attended the hearing, but did not provide any testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Applications, Notices of Dispute Resolution Hearing, and the Parties' respective evidence. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. Both Parties denied having been served properly; therefore, I will consider only their relevant testimony in making my decision.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of their \$100.00 filing fees?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 25, 2021, and went to October 24, 2022, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,900.00, due on the 25th day of each month prior to the applicable month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$950.00, and no pet damage deposit.

One Month Notice to End Tenancy for Cause

The One Month Notice was signed and dated October 15, 2022; it has the rental unit

address, and it was served via email and by leaving a copy in the mailbox/slot on October 15, 2022. The One Month Notice has an effective vacancy date of November 24, 2022, and it was served on the grounds that the Tenant is repeatedly late paying rent.

In the hearing, the T-Agent confirmed that the Tenant's rent was provided to the Landlord repeatedly late, because it is sent via e-transfer. The T-Agent agreed that banks do not immediately transfer the money to the Landlord the same day the transfer is sent. The T-Agent said it can arrive one to three days late. However, when I asked the T-Agent why the Tenant would not send the e-transfer earlier in order to counteract this problem, he said that the Landlord never mentioned it as a problem.

The Landlord said that the Tenant provided him with an apology letter dated October 19, 2022, acknowledging that he was late with the rent repeatedly, although, I have not reviewed this documentary evidence. The T-Agent did not deny the existence of this apology letter, or that it evidenced that the Tenant was aware that the rent was late.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

One Month Notice to End Tenancy for Cause

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(b) the tenant is repeatedly late paying rent;

...

In this case, the Landlord alleged that the Tenant was repeatedly late paying rent. The Tenant did not dispute that this was true. As a result, I find that the Landlord has provided sufficient testimony to meet her burden of proof on a balance of probabilities.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I

find that the Landlord is entitled to an order of possession.

Accordingly, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives the Order.

Given this conclusion, I find it is not necessary to consider the Tenant's other claims. The Tenant's Applications are dismissed wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient, undisputed testimony to confirm the validity of the One Month Notice on a balance of probabilities. The Tenant's Applications are dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms. The Tenant must be served with **this Order** as soon as possible.

This **Order** may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 02, 2023

Residential Tenancy Branch