



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: CNC MNDCT OLC LRE FFT

Introduction

This hearing was conducted in response to the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated November 3, 2022 (1 Month Notice), for a monetary claim of \$8,800 for money owed for compensation or damage under the Act, Regulation or tenancy agreement, for an order directing the landlord to comply with the Act, Regulation or tenancy agreement, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, and to recover the filing fee.

The tenant, landlord and agent for the landlord (agent) attended the teleconference hearing and were affirmed. At the start of the hearing, I introduced myself and the participants. The participants were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had had the opportunity to review the documentary evidence served on them by the other party, I find there are no service issues.

Preliminary and Procedural Matters

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined

during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice at this proceeding and the filing fee. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If no, is the landlord entitled to an order of possession under the Act?
- If yes, should the tenancy continue under the Act?
- What should happen to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on March 1, 2022, although the tenant claims they did not move into the rental unit until April 26, 2022. Monthly rent of \$2,400 is due on the first day of each month.

The tenant stated that they received the 1 Month Notice on November 3, 2022. They filed their application to dispute the 1 Month Notice on November 9, 2022. The 1 Month Notice is signed and dated and has an effective vacancy date of December 31, 2022.

The reason listed as the cause on the 1 Month Notice is repeated late payment of rent. The Details of Cause state the following:

Tenant had been repeatedly late paying rent from April 2022 to Oct 2022. Every month this period the rents were late paid.

During the hearing the agent referred to the following:

Below is the summary of rents paid late between Jun and Oct, 2022. The supporting document named "Proof of rents paid late" confirmed the rents were sent late by the tenant.

1. On June 8, 2022, [REDACTED] paid partial June \$1000 by interact transfer. (The payment was made by [REDACTED] on his behalf) – see page 1
2. On June 9, 2022, [REDACTED] paid partial June \$1000 by interact transfer. – see page 2
3. On June 10, 2022, [REDACTED] paid partial June \$287.72 by interact transfer. – see page 3
4. On June 17, 2022, [REDACTED] paid partial July rent \$1000 by interact transfer. – see page 4
5. On July 9, 2022, [REDACTED] paid partial July \$500 by interact transfer. – see page 5
6. On July 10, [REDACTED] sent \$956 as balance Jun rent and balance July rent. – see page 6

7. On Aug 6, 2022, [REDACTED] paid partial August rent \$1000– see page 7
8. On Aug 7, 2022, [REDACTED] paid partial August \$1000– see page 8
9. On Sept 4, 2022, [REDACTED] paid partial September \$1000. – see page 9
10. On Sept 8, 2022, [REDACTED] paid partial September \$1000. – see page 10
11. On Sept 9, 2022, [REDACTED] paid \$580.53 as partial Aug rent and balance Sept rent.– see page 11
12. On Oct 3, 2022, [REDACTED] paid partial October \$1000. – see page 12
13. On Oct 5, 2022, [REDACTED] paid partial October \$1000. – see page 13
14. On Oct 6, 2022, [REDACTED] paid \$460.48 balance Aug rent and balance for October rent. – see page 14

[personal names redacted to protect privacy]

The tenant was asked why they kept paying their rent late month after month. The tenant testified the rental unit “had issues” and mentioned carpet and a previous tenancy, which I will address later in this decision.

The tenant was asked if they had any authorization from an arbitrator to not pay the rent, and the tenant confirmed that they did not have any such authorization.

The landlord was asked if rent was owing for March 2023 and the agent confirmed that currently there was no money owed for March 2023. The landlord was asked if they wanted to continue the tenancy and the agent confirmed that the landlord wants to end the tenancy due to the continued late payment of rent.

Analysis

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

Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. I find the testimony of the tenant, landlord and agent support that rent for June, July and August of 2022 were all late. Therefore, I find it was not necessary to consider late payments beyond August 2022 and find the 1 Month Notice was valid and complies with section 52 of the Act. Furthermore, I the tenant had insufficient evidence of any right under the Act to withhold rent. Therefore, I **dismiss** the tenant’s application to cancel the 1 Month Notice and I uphold the landlord’s 1 Month Notice, with an effective vacancy date of December 31, 2022. Section 55(1) of the Act applies and 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.**
[emphasis added]

Given the above, **I must grant** the landlord an order of possession pursuant to section 55 of the Act **effective March 31, 2023 at 1:00 PM.**

I find the tenancy ended on December 31, 2022, which was the effective vacancy date listed on the 1 Month Notice.

I decline to grant the filing fee as the tenant's application has no merit.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed without leave to reapply.

The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective March 31, 2023 at 1:00 PM. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant is cautioned that if they fail to vacate the rental unit as required, they can be held liable for all costs related to enforcing the order of possession, including but not limited to court costs and bailiff fees.

This decision will be emailed to both parties as indicated above.

The order of possession will be emailed to the landlord only for service on the tenant.

The filing fee is not granted.

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 23, 2023

Residential Tenancy Branch