



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated November 3, 2022 ("One Month Notice").

The Tenant, H.L., the Landlord, the Landlord's spouse, K.N., and an agent for the Landlord, J.Y. ("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 said that his mother is the actual tenant who lives in the rental unit; however, H.L. said that he has arranged for this tenancy for his mother and he is her representative in this matter. The Landlord did not dispute this. For ease of reference, I have referred to H.L. as the "Tenant" throughout this Decision.

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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed term tenancy was scheduled to begin on March 1, 2022, and runs to February 29, 2024; however, they agreed that the Tenant was not allowed to move in until April 26, 2022. They agreed that the Parties' tenancy agreement requires the Tenant to pay the Landlord monthly rent of \$2,000.00, on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit.

The Parties agreed that the One Month Notice was signed and dated November 3, 2022, and has the rental unit address. They agreed that it was served via registered mail on November 3, 2022, with an effective vacancy date of December 31, 2022, and it was served on the grounds that the Tenant was repeatedly late paying rent.

In the hearing, and in the Landlord's evidentiary submissions, the Agent said the Tenant's payments have been as follows:

Date Rent Due	Amount Owing	Amount Received	Date Received
May 1, 2022	\$2,000.00	\$1,000.00 \$1,000.00	May 2, 2022 May 5, 2022
June 1, 2022	\$2,000.00	\$1,000.00 \$1,000.00	June 5, 2022 June 7, 2022
July 1, 2022	\$2,000.00	\$1,500.00 \$500.00	July 4, 2022 July 9, 2022
September 1, 2022	\$2,000.00	\$1,000.00 \$1,000.00	Sept. 1, 2022 Sept. 2, 2022

The Tenant did not deny having paid rent, as set out above. In the hearing, he said:

First of all, my mother can't move from this apartment. The Landlord can help me to find another apartment where my mother can live. I don't have a choice; my mother has arrived in Canada, if I have to find another apartment, maybe month to month, my mother doesn't have a place to live.

I asked the Tenant if he had paid the rent late, as set out above, and he said, "Yes." However, the Tenant said that from May through September 2022, the Landlord had not served the Tenant with a 10 Day Notice to End the Tenancy for Unpaid Rent when he paid late. He said: "If they say my late payment is unacceptable, they should send me the [10 Day Notice], in May through September."

The Tenant said his second point is that he has always paid on time from October 2022 through March 2023.

The Agent responded, as follows:

I took over the management after the tenancy started, . . . but I am trying to say that we are talking about late payment from May to September – the rents were repeatedly late paid.

Second, the owner didn't issue a 10 Day Notice, but communicated [to the Tenant] about the late payment. We took over in October 2022. The Landlord is not the expert like us. We issued a 10 Day Notice right away. But this does not mean that the Tenant has excuses to pay the rent late, if the Landlord didn't issue the 10 Day Notices [in May through September 2022]. The Landlord can issue a One Month Notice, if the Tenant is repeatedly late. It's not relevant, if they didn't issue 10 Day Notice - it doesn't mean the rent can be paid late.

Analysis

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

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:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In the case before me, I find that the Landlord has established that the Tenant repeatedly paid rent late from May through September 2022.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

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, 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.

Conclusion

The Tenant is unsuccessful in their Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet their burden of proof on a balance of

probabilities. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of December 31, 2022.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective two days after deemed service on the Tenant. Should the Tenant fail to comply with this Order, 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 21, 2023

Residential Tenancy Branch