



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, LRE, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Landlord personally served the One Month Notice on September 27, 2022. The Landlord uploaded a witnessed Proof of Service form #RTB-34 attested to this service. The Tenant refused to sign the Proof of Service. I find that the One Month Notice was served on the Tenant on September 27, 2022 pursuant to Section 88(a) of the Act.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package on an unknown date by Canada Post registered mail (the "NoDRP

package”). The Tenant stated he misplaced the tracking number information. The Landlord testified that he did not receive a package from the Tenant, instead he received a courtesy copy of the NoDRP package from the RTB. On February 3, 2023, a courtesy copy of the NoDRP package was sent to the Landlord by the RTB.

Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

I find the Tenant has not proven that he served the Landlord with the NoDRP package. As the Tenant did not serve the Landlord at all with the NoDRP package or his evidence, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss all of the Tenant's claims without leave to re-apply.

The Landlord served the Tenant with the review consideration decision and his evidence by Canada Post registered mail on March 1, 2023. The Landlord referred me to the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's package and evidence. I find that the Tenant was deemed served with the Landlord's review consideration decision and evidence five days after mailing them on March 6, 2023 pursuant to Sections 88(c) and 90(a) of the Act.

Issue to be Decided

Is the Landlord entitled to an Order of Possession for the One Month Notice.

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this oral tenancy began approximately five or six years ago. Monthly rent is \$900.00 payable on the first day of each month. The Landlord stated that a security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant stated that the Landlord did not collect a security deposit at the beginning of the tenancy.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was October 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

The tenant does not pay rent on time as agreed upon. They are to pay rent on the first of every month, however, they always delay the payment.

Here are the dates they paid their rent for this year, instead of paying on the first of every month:

September 07, 2022

August 05, 2022

July 05, 2022

June 03, 2022

May 06, 2022

April 07, 2022

March 07, 2022

February 04, 2022

January 07, 2022

We have told the tenant multiple times to pay the rent on time but continue to delay their payments.

The Landlord testified that rent continues to be late even in January 2023. Since serving the One Month Notice on the Tenant, when he pays his rent, the Landlord has issued receipts for use and occupancy only.

The Tenant stated that he was given permission by the Landlord to pay his rent on the 3rd or 4th of each month. The Landlord denies this claim.

The Landlord seeks an Order of Possession.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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

Section 47 is the relevant part of the legislation in this claim. It states:

Landlord's notice: 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;

...

- (2) A notice under this section must end the tenancy effective on a date that is*
 - (a) not earlier than one month after the date the notice is received, and*
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) must vacate the rental unit by that date.*

The Tenant was personally served with the One Month Notice on September 27, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on October 4, 2022 which was within the 10 days after receiving the One Month Notice, but the Tenant did not serve the NoDRP package on the Landlord and I dismissed his application.

The Tenant said he was given permission to pay rent on the 3rd or 4th of each month, although the Landlord denies this claim. Even if I accepted that the Landlord had given permission to the Tenant to pay his rent later, he would have paid his rent late in seven months prior to the Landlord serving the One Month Notice.

Residential Tenancy Policy Guideline #38-Repeated Late Payment of Rent provides a statement on the policy intent of the legislation regarding repeatedly late rent payments. It states:

...

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant was late at least seven months prior to receiving the One Month Notice. The Landlord did not intend to reinstate the tenancy as supported by his issuing a receipt for use and occupancy only after serving the One Month Notice. I find the Landlord has proven on a balance of probabilities cause to end this tenancy.

As the Tenant's application is dismissed, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.

I previously found that the One Month Notice complies with Section 52 of the Act, and I uphold the Landlord's notice. Pursuant to Section 55(1) of the Act, I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. 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 Act.

Dated: April 03, 2023

Residential Tenancy Branch