



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GLR PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC PSF OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on May 11, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord both attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord stated they did not receive the Tenant's Notice of Dispute Resolution Proceeding package, but since they were able to obtain a copy from the RTB, they were willing to proceed with the hearing in the absence of service from the Tenant. The Landlord confirmed receipt of the Tenant's initial evidence package. The Tenant stated she also sent a second evidence package by fax to the Landlord's fax number, as noted on the header of a letter provided into evidence. The Tenant did not provide any proof of service or fax confirmation into evidence. The Landlord denied receiving this second package. Without further proof of service, I find the Tenant has failed to sufficiently demonstrate that she sent the second evidence via fax. I find this package is not admissible.

The Tenant confirmed receipt of the Landlord's evidence package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant initially applied to cancel a 10 Day Notice to End Tenancy. However, she uploaded a copy of a 1 Month Notice to End Tenancy for Cause. It is clear that the Tenant intended to cancel the 1 Month Notice, not a 10 Day Notice, and as such, I hereby amend the Tenant's application accordingly. Both sides were in agreement with this amendment.

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause (the Notice)

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice because the Tenant is repeatedly late paying rent. The Tenant acknowledged receipt of the Notice on January 15, 2023. Both parties agree that rent is due on the first of the month.

The Landlord testified that during 2022, the Tenant has been late paying rent at least 6 times (February, March, July, August, September, November). The Tenant acknowledged paying rent late on these months, and that she was late 2-5 days each time.

The Landlord explained that the Tenant has a history of paying rent late, and her issues started before 2022. More specifically, the Landlord stated that the Tenant was late in

December 2021, and she was served with a 10 Day Notice to End Tenancy for Unpaid rent in December 2021. The Landlord stated that the Tenant didn't pay until mid-December, but they decided not to pursue eviction at that time. However, since the Tenant has been late so often, they are not willing to continue the tenancy. The Tenant did not directly refute receiving a 10 Day Notice in December 2021. However, she stated she never had any conversations with the Landlord about late rent at that time.

The Tenant stated that she has been a tenant in this building for over 10 years, and for many years, she paid by post dated cheques, until about 3-4 years ago when she switched to e-transfer as a method of payment. The Tenant stated she asked to go back to post-dated cheques several times because it is easier for her to stay organized. However, the Landlord has not accommodated. The Tenant also stated that the Landlord didn't approach her during 2022 to take issue with the late payments of rent. The Tenant opined that the Landlord has waived their reliance on the late payment of rent because they failed to act in a timely manner and failed to communicate their issue to the Tenant. The Tenant also asserts she had exceptional circumstances, although this was only briefly mentioned.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

I note the Landlord issued the Notice on the following ground:

Tenant is repeatedly late paying rent.

Both parties agree that rent is due on the first of the month. Further, at the time the Notice was issued in January 2023, both parties agree that the Tenant had been late paying rent 6 times in 2022. I note the Tenant asserts that she had exceptional circumstances that caused her to be late. However, I do not agree, such that it warrants extra time to pay rent or that her circumstances are such that her late payments cannot reasonably be considered as part of this Notice. Further, I note the Tenant asserts that the Landlord waived his reliance on the late payment of rent. However, I do not agree. I note the Landlord issued a 10 Day Notice to End Tenancy for Unpaid rent in December 2021. The Tenant did not directly refute that this was served to her that month. This indicates that the Landlord was taking issue with rent being late and did so prior to issuing this 1 Month Notice. It appears the Landlord allowed the tenancy to continue for a period of time. However, late payments continued 6 more times in 2022. I note the Tenant wanted to be able to pay rent by post-dated cheques. However, I note she has also been paying rent by e-transfer for 3-4 years now, largely without issue. It is unclear why this is not a viable option for rent payment.

I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

***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.

Given that the Tenant had paid rent late at least 6 times in 2022, as specified above, at the time the Notice was issued, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

As the Tenant was not successful with this application, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **2 days** after service on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this

order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 15, 2023

Residential Tenancy Branch