



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC, RP, FFT
Landlord: OPC, MNDL, FFL

Introduction

On December 29, 2022, the Tenants (hereinafter, the “Tenant”) filed their Application at the Residential Tenancy Branch:

- a. to dispute a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- b. for repairs made to the rental unit;
- c. for reimbursement of the Application filing fee.

On February 6, 2023, the Landlord submitted an Application:

- d. for an Order of Possession in line with a One Month Notice;
- e. for compensation for monetary loss/other money owed;
- f. for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 1, 2023. At the outset, both parties confirmed that they received the Notice of Dispute Resolution Proceeding for the other’s Application, as well as they prepared evidence of the other. On this basis, the hearing proceeded as scheduled.

Preliminary Matter – unrelated issue

At the outset, I advised both parties of the immediate issues concerning the Notices to End Tenancy issued by the Landlord. The Landlord's Application referred to two separate Notices to End Tenancy from the one the Tenant applied against on their separate Application.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the other issue raised by the Tenant on their Application, item b. listed above. By Rule 2.3, this other issue is unrelated, and I amend the Tenant's Application to exclude this matter. The Tenant has leave to reapply on this other issue. This means they may file a new and separate application to address this single other issue, and this does not preclude proper consideration of the issue of repairs by another arbitrator.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for either of their Application, pursuant to s. 72 of the *Act*?

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Background and Evidence

Herein I set out the background and evidence that is relevant to the analysis below that forms the basis for my final decision in this matter. There were several other issues presented by the parties in the hearing regarding the state of the rental unit property, the need for repairs, and the number of occupants at the rental unit, each forming separate parts of the party's grounds

for dispute resolution. I describe, in this section, only the evidence and submissions relevant to the issues and findings.

The Landlord provided a copy of the “Rental Agreement” they had with the Tenant. The parties signed this document on October 27, 2019 for the tenancy starting on December 1, 2019. The rent amount was \$2,450 as at the start of the tenancy, payable “no later than the first day of each month.” The agreement specifies the rent is “payable in cash or certified cheque at [Landlord’s address for service] no later than the first day of each month.”

In the hearing, the Tenant presented that the term in the agreement about late payment of rent – wherein the Landlord imposed a \$100 penalty for each late payment – was “unconscionable”, and the *Act* only allows a fee of \$25 for this. The Landlord acknowledged this in the hearing.

In the evidence, the Landlord presented a Notice of Rent Increase. They used the specific form from the Residential Tenancy Branch for that purpose. The Landlord issued this on September 17, 2022, increasing the rent from \$2,588 to \$2,640, effective January 1, 2023. The Landlord clarified in the hearing that this was a 2% increase in rent, with its basis being the maximum allowable amount as per the *Act*.

The Landlord signed and served a One-Month Notice on January 15, 2023 (the “One-Month Notice”). This provides the end-of-tenancy date of February 28, 2023.

On page 2, the Landlord indicated the following reason for ending the tenancy:

- Tenant is repeatedly late paying rent.

The Landlord provided more detail on the same page:

The rent is due on the 1st day of every month as per our rental agreement. The Tenant has paid rent late in July 2022, November 2022 and January 2023. That is 3 times late in the last 6 months. A 10-Day Notice of Termination was served on the Tenant every time. Additionally, the Tenant refused to pay full rent in August 2022 until a 10-Day Notice of Termination was served on August 1st, 2022.

For One-Month Notice, the Landlord presented evidence that they issued a 10-Day Notice to End Tenancy for Unpaid Rent in each instance:

- July 2, 2022 for a rent amount of \$72.79 due on July 1, 2022 – the Tenant paid this balance on July 2, 2022

In the hearing, the Landlord clarified that the rent at this time was \$2,588 monthly. The Tenant clarified that the legal rent amount (in their opinion) was \$2,486. This \$72.79 amount was for a leaky faucet, and they withheld this amount from that month's rent because of a faucet repair that they had paid for.

- November 4, 2022 for a rent amount of \$2,588 due on November 1, 2022 – the Tenant paid this on November 4, 2022.
- January 2, 2023 for a rent amount of \$2,626 due on January 1, 2023 – the Tenant paid this balance on January 2, 2023.

The Landlord's record also shows their message to the Tenant on February 3, 2023, clarifying that they accepted a rent payment of \$2,626 "for use and occupancy only", with the monthly rent at that time being \$2,640, not \$2,626.

The Landlord also presented an additional submission dated April 4, 2023, describing additional late rent payments:

- for March 2023 the Tenant paid \$2,626 and not \$2,640, with an associated 10-Day Notice;
- and the April 2023 was late, with \$440 deducted "arbitrarily"; then paid by the Tenant after receiving another 10-Day Notice.

The Landlord concluded this part of their submission by providing that rent was late 5 times in the last 10 months, done "intentionally" by the Tenant. In the hearing, the Landlord described the Tenant as "enjoying this process" that forces the Landlord to travel to the rental unit each month to serve another 10-Day Notice, only to have the Tenant then pay the correct amount within a few days later.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* s. 47 states, in part:

- (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

The *Act* s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to s. 47 and I accept the Landlord's evidence that they served this document to the Tenant in person at the rental unit.

The *Act* s. 52 provides:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) . . . state the grounds for ending the tenancy,

. . . and

(e) when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content.

I find the Landlord provided sufficient evidence to show the Tenant was repeatedly late paying rent. This constitutes a reason for ending the tenancy as per s. 47. There is no provision in the *Act* for the Tenant having a reasonable excuse for late payment of rent, not under any circumstances without authority from the Residential Tenancy Branch to do so. I find the Tenant was not relieved of complying with the terms of the tenancy agreement which states the rent was due on the 1st of each month. The Tenant did not present that they disputed any rent amount increase during this tenancy as was their right to do so, either on the Landlord's notice of rent increase issued in 2022, nor on the increase in rent on the basis of an increased number of occupants in the rental unit.

I find the Landlord provided ample evidence to show the Tenant's repeated late payment of rent. Further, I find the One-Month Notice issued by the Landlord on January 15, 2023 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. I am upholding the Landlord's One-Month Notice; therefore, I find the Landlord here is entitled to an Order of Possession.

From my review of the tenancy agreement, I find the parties agreed that there would be a fee for late payment of rent. Though the Landlord initially imposed \$100, they acknowledged that the maximum allowable was \$25. This is as set out in s. 7(1)(d) of the *Residential Tenancy Regulation*. I find the tenancy agreement provides for this fee, and the Tenant was aware of this.

The Landlord applied for compensation for this fee. Initially this was for the June 2022, November 2022, and January 2023 late rent payments, totalling \$75. I amend the Landlord's Application to include the March 2023 and April 2023 late rent payments, as shown in the record. This amended amount claimed by the Landlord, which I herein grant to them, is \$125.

Because the Landlord was successful in this Application, I grant reimbursement of the full amount of the Application filing fee.

I order the Landlord to retain \$225 from the Tenant's security deposit of \$1,225 in full satisfaction of the monetary award for the late rent payment fees, and the Application filing fee. The authority for this is s. 72(2)(b).

The remainder of the Tenant's security deposit of \$1,225, as well as the pet damage deposit of \$1,225 will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

The validity of each of the other One-Month Notices issued by the Landlord, on December 26, 2022 and December 31, 2022, is not at issue because the tenancy is ending. I cancel each of those documents and they are of no effect.

Given the Tenant was not successful on this Application, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the December 26, 2022 One-Month Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, **effective TWO DAYS after they serve it to the Tenant**. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I authorize the Landlord to retain the amount of \$225 from the Tenant's security deposit only.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 1, 2023

Residential Tenancy Branch