



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNQ, MNRT, MNDCT, RP, PSF, LRE, FFT

Introduction

On January 7, 2023, 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 compensation for the cost of repairs they made during the tenancy
- c. for compensation for monetary loss/other money owed
- d. for repairs made to the rental unit;
- e. for the Landlord’s provision of services/facilities required by the tenancy agreement/law
- f. to suspend or set conditions on the Landlord’s right to enter the rental unit
- g. 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. Both the Tenant and the Landlord attended the hearing.

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 Tenant’s Application referred to the One-Month Notice served to them by the Landlord in January 2023.

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 the One-Month Notice issued by the Landlord. By Rule 6.2, I do not consider the other issues raised by the Tenant on their Application, items b. to f. listed above. By Rule 2.3, these other issues are unrelated, and I amend the Tenant’s Application to exclude them. I grant the Tenant leave to reapply on these other issues. This means they may file a new application to address these other issues, and this does not preclude proper consideration of the issues by another arbitrator.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding and evidence

Though the Tenant stated they sent the Notice of Dispute Resolution Proceeding to the Landlord both by registered mail and via email, the Landlord stated the Tenant verbally informed them of the hearing. The Landlord then contacted the Residential Tenancy Branch who sent the Notice of Dispute Resolution Proceeding to the Landlord.

The Tenant stated they provided their evidence to the Landlord “in the mail” and via email to the Landlord. The Landlord stated they did not receive evidence from the Tenant. The Landlord stated that, to their knowledge, the only issue was about late rent payments by the Tenant. They did not know about the Tenant’s other issues that were listed on their Application.

Given that the Tenant did not provide proof of service of their evidence to the Landlord, I find as fact they did not serve their evidence to the Landlord. I exclude all evidence the Tenant provided to the Residential Tenancy Branch for this reason. I cannot consider evidence not provided to the Landlord for this hearing.

As well, the *Residential Tenancy Branch Rules of Procedure* are in place “to ensure a fair, efficient, consistent process for resolving disputes for landlords and tenants.” In addition to setting time limits on the need for service of evidence (Rule 2.5, Rule 3.1, and Rule 3.14), Rule 3.7 is specific on organization of evidence;

To ensure a fair, efficient, and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application

for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Though I am not considering the Tenant's evidence because they did not provide it to the Landlord, I also exclude it from consideration because it was not easily identifiable or organized.

Preliminary Matter – Landlord's evidence

Because the Tenant described particular evidence they received from the Landlord – that is, screenshots showing bank transactions of rent payments – I find they received the Landlord's prepared evidence from the Landlord for this hearing. Also, the Landlord provided a copy of a post office receipt and registered mail label showing they sent that information to the Tenant on April 13, 2023. Because the Landlord provided proof that they served this evidence to the Tenant, it receives my full consideration in this decision.

Rule 3.19 allows an arbitrator to direct a party to provide evidence after a hearing starts. I allowed the Landlord the opportunity to provide additional evidence; in particular, this was a copy of the One-Month Notice. This was so I could verify key details on that document. I find there is no prejudice to the Tenant because this was the same document served to them in January 2023 and formed the basis for their Application to the Residential Tenancy Branch on January 7, 2023. I give this document full consideration where necessary in my decision below.

Issues to be Decided

Is the Tenant entitled to cancellation of the One-Month Notice?

If the Tenant is not successful in this Application, 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 their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

I set out only the background and evidence that is relevant to the analysis below that forms the basis for my final decision in this matter. There were other issues presented by the Tenant in the hearing regarding the need for repairs, and money they spent for repairs. I describe, in this section, only the evidence and submissions relevant to my findings and decision below.

The Landlord provided a copy of the “Rental Agreement” they had with the Tenant. The parties signed this document on March 23, 2021 for the tenancy starting on March 1, 2021. The rent amount was \$2,000 as at the start of the tenancy, payable on the 1st day of each month. Both parties agreed the rent increased to \$2,040 on January 1, 2023 and the Landlord presented a Notice of Rent Increase document showing this.

The Landlord signed and served a One-Month Notice on January 4, 2023 (the “One-Month Notice”). This provides the end-of-tenancy date of March 1, 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:

[One-Month Notice] is served to Tenant by attaching it to the entry door of the rental unit.
Tenant is repeatedly paying late rent, as explained below
Tenant paid Oct rent – Sept 26th \$1,200 & Oct 6th \$800
 Nov rent – Oct 27th \$1300 & Nov 4th \$200 Nov 7th \$300 Nov 21st \$200
 Dec rent – Dec 13th \$550 & Dec 14th \$1445, Dec 14th \$5
 2023 Jan rent – Dec 22nd \$850 & Dec 23rd - \$450

In their evidence, the Landlord provided a copy of the email notification of each e-transfer for rent payments, as set out above. This continued into April 2023. In the hearing, the Landlord referred to this as the Tenant paying their rent in “instalments”.

The Tenant presented that they pay the rent “bimonthly”. They reviewed three issues through which they faced difficulties in the past year: a medical issue last summer, the social assistance provider making an error on their address, and a hospital visit in April. This meant that they were late with rent only three times. The Tenant referred to the record of their e-transfers to the Landlord to show that they provided rent to the Landlord.

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 by attaching it to the door 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 for the Residential Tenancy Branch to do so. I find the Tenant was not relieved from complying with the terms of the tenancy agreement which states that the rent was due on the 1st of each month.

I find the Landlord provided ample evidence to show the Tenant's repeated late payment of rent. Rent was consistently paid in partial amounts, and in a significant number of instances, not in the full amount on the 1st of each month.

I find the One-Month Notice issued by the Landlord on January 4, 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.

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 January 4, 2023 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.

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 2, 2023

Residential Tenancy Branch