



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On January 10, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package, and evidence from both parties was discussed, and there were no issues concerning service. As such, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing package. As well, I have accepted both parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2015, that the rent was currently established at \$2,075.00 per month, and that it was due on the first day of each month. A security deposit of \$950.00 was also paid. A partial copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that the Notice was served to the Tenant by hand on January 3, 2023. The Landlord served the Notice because the “Tenant is repeatedly late paying rent.” The effective end date of the tenancy was noted as March 31, 2023, on the Notice.

The Landlord advised that the Tenant has paid rent late for approximately 80% of the tenancy. He referenced text messages that he sent to the Tenant requesting payment for rent. As well, he cited the bank statement submitted as documentary evidence to demonstrate that the most recent instances of late payment of rent were January 3, 2023, October 3, 2022, September 2, 2022, and July 4, 2022. There were also a significant number of other, previous instances of late payment of rent, but it is not necessary to document all of those here. He confirmed that he never provided the

Tenant with any authorization not to pay the rent on the first day of each month, as per the tenancy agreement.

The Tenant attempted to make submissions on a whole host of other issues that he was unsatisfied with during the tenancy; however, these were not relevant to the matters that required consideration in this hearing. He confirmed that the aforementioned instances of late payment of rent were accurate, and that there were more instances of late payment of rent in the past. He acknowledged that the Landlord never provided him with written authorization to pay the rent on any day other than the first day of each month, as per the tenancy agreement.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the 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 have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;

In addition, I note that the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy when 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. 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.

Section 26(1) of the *Act* establishes that “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.”

The consistent and undisputed testimony is that the Tenant was required to pay all of the rent by the first day of each month. Furthermore, rent was not paid in full on the first day of each month more than three times prior to service of the Notice. As such, I am satisfied that there were at least three instances of late payment of rent, which precipitated service of the Notice.

As there is no evidence before me permitting the Tenant to pay the rent late, contrary to the terms of the tenancy agreement stipulating that rent was due on the first day of each month, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective on **May 31, 2023, at 1:00 PM after service of this Order** on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective on **May 31, 2023, at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises 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 *Residential Tenancy Act*.

Dated: May 5, 2023

Residential Tenancy Branch