



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 15, 2023 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated January 24, 2023 (the "One Month Notice").

The Landlord's Agents D.L., S.D., and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Notice of Hearing and the Landlord's evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act. The Tenant stated that they submitted their evidence to the Tenancy Branch and to the Landlord by placing it in their mailbox, three days before the hearing. The Landlord's Agents stated that they have not yet received the Tenant's evidence.

Preliminary Matters

According to the Rules of Procedure 3.15

Respondent's evidence provided in single package Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures

application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the Tenant submitted their evidence to the Tenancy Branch and to the Landlord late, as it was not received at the very latest, 7 days before the hearing. As such, I find that I will not consider the Tenant's evidence in this decision.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$795.00 to the Landlord on or before the first day of each month. The Tenant paid a security deposit in the amount of \$450.00. The Tenant continues to occupy the rental unit. A tenancy agreement was submitted in support.

The Landlord's Agents stated that there have been ongoing issues and disturbances with the Tenant throughout the tenancy. The Landlord's agents stated that the Tenant has been warned on several occasions, however, the issues continue. The Landlord's Agents also indicated that the Tenant has been repeatedly late paying rent. The Landlord's Agents stated that the Tenant was late paying rent during the following months; February, April, May, June, July, September, October, November, December 2022, and January 2023. The Landlord's Agents stated that no rent has been paid for February, March, April, May, or June 2023.

The Landlord's Agents stated that they subsequently served the Tenant with a One Month Notice for Cause dated January 24, 2023 with an effective vacancy date of

February 28, 2023 by registered mail on January 24, 2023. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent" and;

"Breach of a material term of the tenancy agreement which was not corrected within a reasonable amount of time after written notice to do so"

The Tenant confirmed having received the One Month Notice from the Post Office, however, could not recall when. The Tenant stated that they did not dispute the One Month Notice as they were out of time to do so once they had received the One Month Notice.

The Tenant stated that they do not have records of their late rent payments, however, they are assuming the Landlord's account is correct. The Tenant confirmed that there is an outstanding balance of rent due, as they are awaiting insurance payments. The Tenant questioned the Landlord's fairness given other occupants have also failed to pay rent and are not being evicted.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

The Landlord's Agents served the Tenant with a One Month Notice to End Tenancy for Cause on January 24, 2023 by Canada Post registered mail. The Tenant confirmed receipt, however, could not recall what date. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on January 29, 2023 the fifth day after the registered mailing.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served to the Tenant on January 29, 2023 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on February 28, 2023.

I further find that the Landlord has provided sufficient evidence to demonstrate that the Tenant has been repeatedly late paying rent. As the Tenant is conclusively presumed to have accepted the end of the tenancy, the Landlord has demonstrated sufficient cause to end the tenancy, and there is an outstanding amount of rent due, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. 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 *Residential Tenancy Act*.

Dated: June 12, 2023

Residential Tenancy Branch