



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RJ ENTERPRISES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNE, CNR, RP, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an order requiring the Landlord to make repairs, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Tenant acknowledged that he was not served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not served, the application to cancel it is severed from this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 06, 2023 and March 09, 2023 was sent to the Landlord, although he cannot recall the exact date. Legal Counsel for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On June 13, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was posted on the door of the rental unit on June 08, 2023. The Tenant stated that this evidence was forwarded to him by his sub-tenant, via email, on June 08, 2023. As the Tenant received this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in this Application for Dispute Resolution is possession of the rental unit and I will, therefore, only consider the application to cancel the One Month Notice to End Tenancy and the application to retain the filing fee.

The application for an Order requiring the Landlord to make repairs is not sufficiently related to the Landlord's attempt to end the tenancy. It is therefore severed from this Application for Dispute Resolution and will not be considered at these proceedings.

Preliminary Matter #2

At the start of the hearing both parties indicated they wished to call a witness. Each party was given the opportunity to call a witness at the end of the tenancy, at which time both parties indicated they no longer wished to call a witness.

Preliminary Matter #2

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct name of the Landlord, as that name was provided by Legal Counsel for the Landlord at the hearing.

The parties agree that the rental unit was sold after the tenancy began. The Tenant stated that he is not certain of the correct name of his new Landlord. I note that the

name for the Landlord provided by Legal Counsel for the Landlord is the party identified as the Landlord on the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

The name which appears on this decision and Order reflects the name if the Landlord as provided by Legal Counsel for the Landlord at the hearing.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2020;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy was personally served to the Tenant on March 04, 2023 by posting it on the door of the rental unit;
- the One Month Notice to End Tenancy declared that the rental unit must be vacated by April 30, 2023;
- the One Month Notice to End Tenancy declares that the tenancy is ending because the tenant has been repeatedly late paying the rent and the tenant has assigned or sublet the rental unit without written consent; and
- rent was not paid by the time it was due on July 01, 2022, September 01, 2022, December 01, 2022, January 01, 2023, and February 01, 2023.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

a) the tenant does not pay the security deposit or pet damage deposit within 30 days of

the date it is required to be paid under the tenancy agreement;

- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Tenant received the One Month

Notice to End Tenancy that was posted on the door on March 04, 2023, which informed the Tenant of the Landlord's intent to end the tenancy pursuant to sections 47(1)(b) and 47(1)(i) of the *Act*. The Landlord bears the burden of proven there are grounds to end the tenancy pursuant to section 47(1)(b) or 47(1)(i) of the *Act*.

I find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*, and I dismiss the Tenants' application to set aside the One Month Notice to End Tenancy.

Residential Tenancy Branch Policy Guideline #38, with which I concur, reads, in part:

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.

On the basis of the undisputed evidence, I find that the Tenant paid rent late on 5 occasions between July 01, 2022 and February 28, 2023. I find this establishes that the Tenant was repeatedly late paying the rent, which are grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*.

As the Landlord has grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*, I find that I do not need to determine if the Landlord also has grounds to end the tenancy pursuant to 47(1)(i) of the *Act*.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the One Month Notice to End Tenancy complies with section 52 of the *Act* and I have dismissed the application to set aside the One Month Notice to End Tenancy, I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merit of this Application for Dispute

Resolution and I dismiss the application to recover the for filing the Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on at 1:00 p.m. on June 30, 2023. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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 *Act*.

Dated: June 20, 2023

Residential Tenancy Branch