



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNL, RR, RP, LRE, AS, OLC, PSF, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make arguments. The parties confirmed that they had exchanged their documentation.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's monetary claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply. All other issues have been considered in making this decision.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlords Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should an order for repairs be made?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Should conditions be placed on the landlord's entry into the unit?

Should an order be made to compel the landlord to provide services or facilities agreed to as per the tenancy agreement?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on March 1, 2019 with the rent of \$800.00 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on January 9, 2023 for the following reasons:

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;

The landlord testified that the tenant has been late in paying the rent from April 2022 to January 2023. The landlord testified that the tenant continually has money problems and is unable to pay on time. The landlord requests an order of possession.

The tenant gave the following testimony. The tenant agreed that he was late “two or three times” but argues that because the landlord hasn’t provided him payment for work that he’s done, he’s unable to pay the rent. The tenant would like to stay until he can find another place to live.

Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice.

In this case, the landlord has submitted evidence that the tenant paid rent late on at least three occasions since April 2022. The tenant acknowledges late payment for two or three months. The tenant was unable to dispute whether he had been late in paying rent from April 2022 to October 2022 as he didn’t have his paperwork in front of him for this hearing.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...

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...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant

has been late in paying their rent on at least three occasions. For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the One Month Notice for the tenant's late payment of rent.

Section 55 of the *Act* reads in part as follows:

55 (1) *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*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's One Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the One Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

I need not consider the merits of the Two Month Notice as I have found this tenancy is terminated.

Conclusion

I dismiss the tenants monetary claim with leave to reapply and dismiss the remainder of the tenant's application without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** 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 01, 2023

Residential Tenancy Branch