



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

A proceeding was conducted in response to the Tenant's February 4, 2023 application to dispute a One Month Notice to End Tenancy For Cause issued on January 31, 2023 (the One Month Notice).

Preliminary Matter

Agent SR attended for the Landlord. Although Landlord RCK did not provide a written authorization for Agent SR to act on their behalf, I find that the Tenant paid rent to by e-transfer to Agent SR's email address on more than one occasion, and Agent SR meets the definition of Landlord for the purposes of proceeding with the hearing.

Issue(s) to be Decided

1. Was the Tenant repeatedly late paying rent?
2. Is an order required for Landlord to comply with rent increase rules?
3. Is the Tenant entitled to their filing fee?

Facts and Analysis

The tenancy is based on a verbal agreement starting January 2015 for a monthly rent of \$1,500.00 to be paid in cash on the first of each month. The parties agree that the current rent amount is \$1,950.00, and the Tenant pays by e-transfer to the Landlord's Agent AS. The Tenant continues to live in the rental unit as of the hearing date.

Since around 2022, Landlord RCK developed health issues, and Tenant LJ communicated by text message with Landlord's Agent KK to arrange rent payments, which were made by e-transfer to Landlord's Agent SR's email address. Around 2023, the Tenant began to make rent payments by e-transfer to the Landlord's other agent AS instead.

The parties agree the Tenant has paid rent late. The evidence indicates the Tenant paid rent late nine times since 2021, most recently paying rent late in September 2022, October 2022, November 2022, December 2022, and January 2023. The Tenant says Landlord RCK was flexible with what date the Tenant paid rent and did not take issue if the Tenant paid late. Landlord's Agent SR says that the Landlord requires rent to be paid on time, and they do not condone late payment from the tenant.

The text messages submitted by the Landlord indicate that the Tenant had a hard time paying rent because they were off work on two separate occasions, from late 2021 to early 2022, and then again from late 2022 to early 2023, for medical issues. While the Landlord deposited the late rent payments, they continued to assert that rent was required on time.

Regarding late rent in January 2022, the Agent KK said, "I know it's hard but we are in the same position." On March 31, 2022, Agent KK attempted to collect rent for April 1, 2022. When Tenant LJ said they would be late paying rent, Agent KK said it is hard to make arrangements to pay Landlord RCK's expenses last minute "on the day they are due."

In November 2022, Landlord's Agent KK said "I just need to know when you are planning to send the rent." In December 2022, Agent KK asked if Tenant LJ will be able to pay the rent in full in January 2023. The Tenant replied, "yes Dec and Jan will be caught up in Jan." The Tenant later said that payments will be made throughout January 2023 and apologized, noting that they did not expect to have emergency heart surgery.

On January 2, 2023, the landlord served a 10 Day Notice to End Tenancy for unpaid rent in the amount of \$4,600.00 for rent owing for November 2022, December 2022, and January 2023. The Tenant paid \$1,000.00 on January 3, 2023, and the Landlord issued a new 10 Day Notice on January 5, 2023, for \$3,600.00. The Tenant paid the remaining rent owing by January 13, 2023. The 10 Day Notice is a clear indication that the Landlord did not agree to the Tenant paying rent late. I find the Landlord required rent to be paid on time.

The Landlord issued the One Month Notice on January 31, 2023. The Tenant says that the One Month Notice was served to their door rather than in person as stated on the Notice and the move out date is incorrect because it does not provide one full rental month's notice. Based on the evidence, I find that the One Month Notice was served to the door of the rental unit on January 31, 2023, and I deem the tenant received it on February 3, 2023. As such the correct move out date is March 31, 2023. The issues with service and the move out date are corrected under section 53 of the Act and do not invalidate the Notice, and I find the One Month Notice complies with section 52 of the Act in terms of its form and content.

The Tenant says the Landlord's Agents only served the One Month Notice because the Tenant would not agree to a rent increase proposed by Landlord's Agent AS. The Tenant submitted text messages they received from Agent AS on January 26, 2023, where Agent AS says they do not want to give the Tenant notice to move, but that rent is too low, and Agent AS asks how much rent the Tenant can afford to pay.

I have considered the Tenant's argument that the Landlord may have been motivated to end the tenancy because of low rent. I find that the Landlord's motivations for ending the tenancy do not change the fact that the Landlord has established cause for ending the tenancy.

I find the Landlord is entitled to end the tenancy under Section 47(1)(b) of the Act because the Tenant was repeatedly late paying rent. The Tenant is not entitled to their filing fee. An order that the Landlord comply with the rent increase rules is not required because the tenancy is ended.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

I grant the Landlord an order of possession. Should the Tenant fail to move out within two days after receiving the order, the Landlord may enforce the order in 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 5, 2023

Residential Tenancy Branch