



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, LRE, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order for regular repairs, pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Both parties confirmed receipt of all documents required for this hearing.

Preliminary Issue- Severance

Residential Tenancy Branch 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 claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are 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. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Are the landlords entitled to an Order of Possession?
3. Is the tenant entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on February 1, 2021
- Monthly rent in the amount of \$1,100.00 is payable on the first day of each month
- A security deposit of \$550.00 was paid by the tenant to the landlords

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenant was served with the Notice via registered mail on February 18, 2023. The tenant testified that he received the Notice but did not know on what date.

The agent testified that the tenant was served with the Notice because he is repeatedly late paying rent. The agent testified that the tenant was late paying rent for the following months:

- January 2022
- May 2022
- July 2022
- August 2022
- January 2023

The Notice states that the tenant was late paying rent as above except the month of January 2023 does not appear on the Notice and is replaced with the month of February 2023.

Both parties agreed that rent was paid on the following dates:

- Monday January 10, 2022
- Monday May 2, 2022
- Monday July 4, 2022
- Tuesday August 2, 2022
- Monday January 9, 2023

It was uncontested that February 2023's rent was paid on time.

The first of the above months falls on the following days of the week:

- January 1 2022- Saturday
- May 1, 2022- Sunday
- July 1, 2022- Saturday
- August 1, 2022- Monday
- January 1, 2023- Sunday

January 1, 2022, July 1, 2022, August 1, 2022 and January 1, 2023 are all statutory holidays.

The tenant testified that he was late paying rent because the landlord wanted the tenant to pay him in cash on the first of the month at his office, but the landlord's office was closed Sundays and statutory holidays. The tenant testified that for the months of May, July and August 2022 he paid his rent on the next business day the landlord's office was open.

The tenant testified that he and the landlord verbally agreed that if the first of the month fell on a date the landlord's office was closed, the tenant could pay on the next day the landlord's office was open. The agent testified that she was not aware of any verbal agreement with the landlord and that rent was due on the first of the month. The agent testified that she has visited the landlord at his office on the weekend and believes that it is open on weekends. The tenant testified that the landlord's office has limited hours on Saturdays and is closed on Sundays and statutory holidays.

The tenant entered into evidence the following messages between the tenant and the landlord:

- Sunday, May 1, 2022:
 - Tenant: Are you coming to your office to collect rent today? As it is a Sunday
 - Landlord: No response
- Saturday, July 2, 2022:
 - Tenant: Hi doctor Your office is closed today also? When I can give you the rent Do you want e transfer?
 - Landlord: Hi [tenant] I am out of town, can pay on Monday, No penalty
- Monday, August 1, 2022:
 - Tenant:
 - Doctor are you at office? What about rent
 - I called at your office but no one answered
 - Landlord: No response
- Wednesday, December 28, 2022:
 - Tenant:
 - Hey doctor... I called to pay rent but she said not to pay rent today
 - What's the issue?
 - Landlord: No response
- Tuesday, January 3, 2023:
 - Tenant: Happy new year.. I am free today only to give rent. Else next week Monday or Tuesday.. as I am working daily and your office closes early
 - Landlord: No response

The tenant testified that rent in January 2022 and January 2023 was paid late because the landlord refused to accept it. The tenant testified that the landlord gave him illegal rent increases effective in January 2022 and January 2023 and that when the tenant

refused to pay them, the landlord refused to accept the rent because it was not as much as he wanted.

The tenant entered into evidence a Residential Tenancy Branch Decision between the parties at the subject rental address dated May 16, 2023 in which the arbitrator found that the January 2022 and the January 2023 rent increases contravened the *Act*. The file number for the previous decision is located on the cover page of this Decision.

Analysis

I find that the tenant was deemed served with the Notice on February 23, 2023, five days after its registered mailing in accordance with sections 88 and 90 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that 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.

Based on the tenant's testimony and the messages entered into evidence, I find, on a balance of probabilities, that the landlord's doctor's office was closed on Sundays and statutory holidays. I find that had the landlord's office been open on Sundays and statutory holidays, the tenant's messages would not have repeatedly asked the landlord how to pay rent on Sundays and statutory holidays or asked if the landlord was coming to the office on those dates.

Based on the messages entered into evidence, I find that the landlord and the tenant did not have a verbal agreement that the tenant could pay rent on the next business day after the first of the month that the landlord's office was open. If such an agreement had been in place, then I find that the tenant would not have reached out to the landlord to ask about rent payments on days where the first fell on a statutory holidays or a Sunday.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. As set out in

section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00 on the first day of each month.

The tenant testified that he knew that the landlord's office was not open on Sundays and statutory holidays. I find that it was the tenant's responsibility to ensure that in months where the first of the month fell on either a Sunday or a statutory holiday, he paid his rent in advance of the first of the month. I therefore find that the tenant was late paying rent in May, July and August of 2022 as rent was paid after the first of the month. Under section 47(1)(b) and Policy Guideline #3 I uphold the Notice and award the landlord an Order of Possession effective at 1:00 pm on June 30, 2023.

I note that the landlord is not permitted to refuse rent and to then use the consequently late rent as a reason to end the tenancy. Based on the messages entered into evidence and the previous decision, I accept the tenant's testimony that January 2022 and January 2023 rent was late because the landlord refused to accept it. However, as the tenant was late paying rent on three other occasions, the landlord is entitled to an Order of Possession.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on June 30, 2023**, which should be 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 19, 2023

Residential Tenancy Branch