



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, DRI, RR, PSF, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.
- Cancellation of a Notice of Rent Increase pursuant to section 43.
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65.
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3).
- An order requiring the landlord to comply with the Act pursuant to section 62.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Service

The parties raised no issues around service.

I find each party served the other in compliance with the Act.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Preliminary Issues

Preliminary Issues are addressed:

1. Granting Order of Possession
2. Severance of claims
3. Settlement discussions

Preliminary Issue 1 – Granting Order of Possession

I informed the parties that if I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the Act, I was required under section 55 of the Act to grant the landlord an Order of Possession.

The landlord requested an Order of Possession effective June 30, 2023.

Preliminary Issue 2 – Severance

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application is to dispute the One Month Notice. I find the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims, except for the application to dispute the landlord's Notice, are dismissed with leave to reapply.

The tenant's application for reimbursement of the filing fee is dismissed without leave to reapply.

If the tenancy continues, the tenant may reapply for the claims dismissed with leave to reapply subject to any applicable limits set out in the Act.

Preliminary Issue 3 - Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties several times throughout the 60-minute hearing.

Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I endeavoured to assist the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice? Is the landlord entitled to an Order of Possession ?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the lengthy hearing of 60 minutes. They each submitted documentary evidence.

However, in this Decision I will only address the facts and evidence which underpin my findings. I will only summarize and address matters which are essential to determine the issues identified above. I will not review all documentary evidence and testimony.

Tenancy

The parties agreed the tenancy began March 1, 2021, and monthly rent is \$1,400.00. The tenant paid a security deposit of \$650.00.

One Month Notice

The parties agreed the landlord issued a One Month Notice dated February 27, 2023, stating the tenant must move out by March 31, 2023. The reason given for the Notice was that the tenant was repeatedly late paying rent.

The tenant acknowledged service of the Notice.

The landlord acknowledged the tenant applied to dispute the Notice within the allowed period.

A copy of the Notice was submitted which is in the standard RTB form.

Parties' Submissions

The parties agreed the tenant was late in paying rent at least three times in the 12-month period immediately before they issued the One Month Notice.

The landlord testified the tenant was late paying rent every month and submitted receipts in support of this claim.

The tenant testified as follows. The landlord requested that the payments be made in cash or by cheque delivered to the landlord on the first day of the month.

The landlord told the tenant it was acceptable if they paid late. The tenant said that sometimes the landlord was away at work and payment was late because the landlord was not home when rent was due.

The landlord replied as follows. He testified his spouse has a medical condition requiring her to be continuously at home. The landlord submitted a supporting medical report. One of them was always available to accept payment of rent. The landlord's spouse often accepted rent payments from the tenant.

The landlord denied they agreed to late payments, they were not available to accept rent, or they said it was acceptable the rent be paid late.

The tenant requested the application for the Order of Possession be denied and the One Month Notice cancelled.

The landlord requested an Order of Possession effective June 30, 2023.

Analysis

One Month Notice

When a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the Act.

I have reviewed the One Month Notice. I find it is in the approved form and contains information required by the Act.

The reason for issuing it is in dispute. The tenant acknowledged the late payments as testified by the landlord.

The tenant's position is that the landlord agreed the tenant could pay late or the landlord was not available to accept payment. The landlord denied the tenant's assertions.

The tenancy agreement specifies that rent is due on the 1st day of each month.

Section 26 of the Act says a tenant must pay rent when it is due.

I refer to *Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent*. The Guideline says three late payments are the minimum number adequate to justify a notice under these provisions.

The tenant does not dispute that rent has been paid late on more than the three occasions in the year immediately preceding the issuance of the Notice as testified by the landlord.

Based on the credible testimony and documentary evidence of the landlord, I accept the landlord's evidence and find that the tenant has been repeatedly late paying rent without credible explanations.

I find the landlord has met the burden of proof for their claim. Therefore, I grant the landlord an Order of Possession effective June 30, 2023, as requested.

Conclusion

I grant the landlord an Order of Possession effective June 30, 2023.

This Order must be served on the tenant.

This Order may be filed and enforced in the Courts of the Province of BC.

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