



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On March 5, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package and evidence from both parties was discussed, and any issues concerning service were addressed in the hearing. As such, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing package. As well, I have accepted both parties’ evidence packages and will consider them when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2015, that the rent was currently established at \$1,624.00 per month, and that it was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that the Notice was served to the Tenant by hand on February 22, 2023. The reasons the Landlord served the Notice were because the “Tenant is repeatedly late paying rent”, because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/or put the landlord’s property at significant risk”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The effective end date of the tenancy was noted as March 31, 2023, on the Notice.

The Tenant confirmed that she understood that the Notice was for her at the dispute address, despite it not being noted correctly on the Notice by the Landlord.

The Landlord advised that he had a conversation with the Tenant in June 2021 where he informed her that rent must be paid on the first day of each month in accordance with the terms of the tenancy agreement. He testified that she was very diligent in paying the rent on time from July 2021 to April 2022, with the exception of maybe two months. However, from May 2022 to February 2023, she had paid rent late for virtually every month. He stated that he served the Tenant with a 10 Day a Notice to End Tenancy for Unpaid Rent in July 2022, but the Tenant paid this month's rent in full within the required timeframe to cancel this notice. He referenced the documentary evidence that he submitted to support his claims of repeated late payment of rent since May 2022.

The Tenant confirmed that she had a conversation with the Landlord in June 2021 where the Landlord reminded her that rent was due on the first day of each month pursuant to the terms of the tenancy agreement. She advised that she paid rent on time, for the most part, from July 2021 to May 2022. She testified that her co-tenants moved out of the rental unit in May 2022, and she then started paying rent late for virtually every month thereafter. She also acknowledged that she only received the 10 Day a Notice to End Tenancy for Unpaid Rent in July 2022, and that due to the Landlord's inaction and lack of communication, the Landlord accepted that rent did not have to be paid in accordance with the tenancy agreement. She confirmed that she did not have any written authorization from the Landlord permitting her to pay the rent on any day other than the first of each month. As well, she acknowledged that she only paid a portion of May 2023 rent and has not paid any rent for June 2023.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. As the Tenant confirmed that she understood that the Notice was for her, at the dispute address, I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;

In addition, I note that the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy when the Tenant is repeatedly late paying rent:

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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

The consistent and undisputed evidence is that the Tenant was required to pay all of the rent by the first day of each month. Furthermore, the Tenant acknowledged that she had a conversation with the Landlord about this in June 2021, and that she was consistent with these payments until May 2022. In my view, it is evident that rent was due on the first day of each month, from the tenancy agreement, and that the Tenant was reminded of this in June 2021. Moreover, the Tenant was clearly cognizant of this as she paid rent accordingly after this conversation.

However, in May 2022, there is no dispute that the Tenant deviated from compliance with this term in the tenancy agreement. While the Tenant attempted to suggest that the Landlord somehow accepted that rent could be paid on a day other than the first of each month, based on the policy guideline, I do not find that there is any evidence that the Landlord failed to act in a timely manner after the most recent late rent payment. As the Notice was served on February 22, 2023, for February 2023's late payment of rent, this was clearly done in a timely manner.

Given that there is no written authorization from the Landlord permitting the Tenant to pay rent on a day other than the first of each month, I am satisfied that the rent was not paid in full more than three times prior to service of the Notice. As such, I am satisfied that there were at least three instances of late payment of rent, which precipitated service of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises 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 8, 2023

Residential Tenancy Branch