



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding EASTLEIGH VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Landlord's application regarding a One Month Notice for Cause (Notice) issued May 10, 2023.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Can the Landlord recover a monetary award and the filing fee?

Background and Evidence

The Landlord and Tenant entered into a six-month lease for the rental unit on February 1, 2019, to continue thereafter on a month-to-month basis. The monthly rent payable on the first day of the month was initially \$1,200.00 and is currently \$1,239.30 plus \$10.00 for parking. The rental agreement provides for a \$25.00 late fee in the event rent is not paid on the first of the month. A security deposit of \$600.00 was paid by the Tenants on January 12, 2019 was also collected, which the Landlord continues to hold in trust. As of the hearing, the Tenants continue to reside in the rental unit.

The Landlord's counsel stated that the Tenants have been repeatedly late in paying monthly rent during the course of the tenancy. The Landlord's agent stated that the Tenants had been late paying rent for August 1, 2022, April 1, 2023, May 1, 2023 and June 1, 2023. The Landlord submitted copies into evidence of previous 10-Day Notices to End Tenancy for Unpaid Rent issued August 2, 2022, April 2, 2023, and May 2, 2023. Each time the Tenants paid the outstanding rent within the time permitted under the Act.

On May 10, 2023, the Landlord issued a One-Month Notice for Cause to the Tenants for repeatedly paying rent late, with an effective date of June 30, 2023. The Notice was served by registered mail on May 10, 2023.

The Landlord applied for dispute resolution on May 29, 2023, serving the Notice of Dispute Resolution packet on June 2, 2023 and copies of evidence it submitted was sent to each Tenant by registered mail on June 9, 2023. The registered mail tracking numbers indicate that the pick-up notices for each item were delivered to the Tenants on June 6 and June 11, 2023, but were not picked-up by the Tenants and were instead returned to the Landlord. Canada Post tracking information for the evidence packets sent by the Landlord indicate that notifications to the recipients for pick-up was made on June 14 and June 19, 2023. The Tenants did not pick-up the registered mail items containing the evidence and these were returned to the Landlord on July 5, 2023.

The Landlord requested an order of possession and a monetary order for 3 months of late fees (\$75.00; waiving the late fee for June 2023) and reimbursement of the filing fee.

Analysis

Section 52 of the Act sets out the requirements for a valid notice to end a tenancy. It requires that the notice be signed by the party giving the notice, that it provide the address of the rental unit, state the effective date of the notice, provide the reason and when given by the landlord, be in an approved form. A copy of the Notice is in evidence. I find that the Notice was proper under the Act.

Section 90 of the Act deems documents sent by mail are received five (5) days after the date of mailing. I find that the dispute resolution packet is deemed served on June 7, 2023; and, the Landlord's evidence is deemed served on the Tenants on June 14, 2023.

Section 47(1)(b) of the Act provides that a landlord may, by giving notice, end a tenancy when the tenant is repeatedly late paying rent. Section 47(2) requires that the notice state the tenancy termination date not earlier than one month after the notice is received, and a day prior to the rent due date under the tenancy agreement.

Residential Tenancy Policy Guideline 38 addresses repeated late rent payments. It notes "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...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.” Additionally, the Guideline states that a landlord must act in a timely manner to end the tenancy when rent has been repeatedly late.

I find that the Notice to End Tenancy for Cause was consistent with the Act’s requirements and validly served on the Tenants. I find that the Landlord has presented persuasive evidence of repeated late rent payments by the Tenants. I find the prior 10-Day Notices for Unpaid Rent constitute sufficient written warning to the Tenants that rent was due on the first of each month, prior to the Landlord issuing the One Month Notice. I find the Landlord is entitled to end the tenancy under Section 47(1)(b) of the Act. Under section 47(5) of the Act, the Tenants did not make an application for dispute resolution within 10 days from the date of receiving the Notice, the Tenants are conclusively presumed to have accepted the end of the tenancy on the effective date on the Notice.

Conclusion

The Landlord was successful in its application.

I grant an Order of Possession to the Landlord effective July 31, 2023, upon valid service of the Order on the Tenants. Should the Tenants fail to comply with this Order, the Order may be enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a monetary award in the amount of \$175.00 for the three (3) late fees requested plus the application filing fee to be set-off against the security deposit held in trust by the Landlord.

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: July 10, 2023

Residential Tenancy Branch