



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNC, FFT**

Landlord: **OPC, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing, and were represented by their counsel, DB. The landlord attended the hearing with an agent, LG.

As both parties were present, service was confirmed. The parties each confirmed receipt of the applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Issue(s) to be Decided

Should the landlord's notice to end tenancy for cause be upheld or cancelled?

Should either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the tenancy is the basement unit of a single-family house. The landlord and her spouse occupy the upper unit of the house. A copy of the tenancy agreement was provided. This tenancy began on April 1, 2021, with rent set at \$2,000.00, payable on the first day of each month. The tenancy agreement states that the tenant pays half of specified utilities.

The landlord's agent personally served the tenant with a 1 Month Notice to End Tenancy for Cause on March 30, 2023. The notice to end tenancy has an effective date of April 30, 2023 and the stated reason for ending the tenancy is because the tenant is repeatedly late paying rent.

The landlord testified that the tenant has paid rent late the last 19 out of 24 months, from April 2021 to March 2023. The landlord provided copies of her bank statements depicting each of the e-transfer receipts from the tenant as evidence. The landlord provided a table indicating the tenant was late paying rent the past 15 out of 18 months. In the table, the times when the tenant paid rent on time are highlighted in yellow.

(reprinted below).

10/04/2021	E-TRANSFER ***UNC	2000
11/01/2021	E-TRANSFER ***WWR	2000
12/01/2021	E-TRANSFER ***QCE	2185.2
01/04/2022	E-TRANSFER ***bpZ	2000
02/03/2022	E-TRANSFER ***gp8	2000
03/03/2022	E-TRANSFER ***BcB	2487.92
04/04/2022	E-TRANSFER ***Dja	2030
05/02/2022	E-TRANSFER ***HQ2	2000
06/03/2022	E-TRANSFER ***xMH	2030
07/04/2022	E-TRANSFER ***Nc5	2030
08/02/2022	E-TRANSFER ***4Be	2030
09/01/2022	E-TRANSFER ***6Wg	2030
10/17/2022	E-TRANSFER ***wwC	2030
11/09/2022	E-TRANSFER ***bbG	2030
12/05/2022	E-TRANSFER ***zh3	2030
01/05/2023	E-TRANSFER ***5cr	2500
02/06/2023	E-TRANSFER ***Xz5	2060
03/02/2023	E-TRANSFER ***QhF	2570

The landlord testified that rent was raised by 1.5% on April 1, 2022, bringing rent from \$2,000.00 per month to \$2,300.00 per month. The landlord submitted that the tenant was also late in paying his utilities, however late payment of utilities was not the subject of this hearing.

Tenant's counsel gave the following submissions. The banks do not post the transactions of e-transfers the day the transfers are made. They are posted the next business day, and if the e-transfer takes place on a Friday or a weekend, the funds are posted the following business day.

For example, October 1, 2021 was a Friday and the table of posting to the account (above) shows the e-transfer happened on the following Monday, October 4th. The same thing happened for Saturday, January 1, 2022 when the e-transfer was posted on Tuesday, January 4, 2022, the first business day. There are several more instances of the first of the month landing on a Friday, weekend, or statutory holiday including Friday, April 1, Saturday May 1, Friday, July 1, Monday, August 1, 2022. On each of

these days, the bank posted the e-transfer late, even though the tenant paid rent on the first of the month.

The tenant submits that the late payments for October and November 2022 were permitted by the landlord, and the tenant points to texts sent between the two as evidence of this. The landlord knew the tenant was having banking issues and was not in the country between December 2021 and November 2022. f

Tenant's counsel argues that the landlord served the tenant with large water bills for hundreds of dollars at a time, making it difficult to budget for the additional strain on his expenses. The landlord countered, advising that the water utility is charged yearly by the municipality and when she gets the bill, she seeks payment from the tenant. The tenant asked if she would prefer full payment at once or half now, half later and she accepted the full payment option offered by the tenant.

Analysis

The tenant was served with the landlord's notice to end tenancy on March 30, 2023, and filed his application to dispute the notice within 10 days, on April 6, 2023. When a tenant files an application to dispute a landlord's notice to end tenancy, the onus is on the landlord to prove the reasons for ending the tenancy are valid, pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

The single reason for ending the tenancy is that the tenant is repeatedly late paying rent. Section 26 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, 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 tenancy agreement shows that rent is due on the first day of each month.

The landlord testified the tenant was late in paying rent 19 out of 24 months between April 2021 and March 2023. The landlord provided monthly bank statements to corroborate this. Despite this evidence, I will focus on the table presented by the landlord for payments between October, 2021 and March, 2023.

I accept the tenant's submissions that the bank didn't post the e-transfer transactions until the first business day after the first day of the month. Accordingly, the late payments for October, 2021, as well as January, April, May, July and August of 2022 are considered paid on time.

For the some of the months that remain, I find the tenant was late in paying rent. To be clear, I find the tenant failed to pay rent on the first day of the month, as required under the tenancy agreement. I find the tenant was late paying rent on the following dates:

Thursday	February 03, 2022
Thursday	March 03, 2022
Friday	June 03, 2022
Monday	October 17, 2022
Wednesday	November 09, 2022
Monday	December 05, 2022
Thursday	January 05, 2023
Monday	February 06, 2023
Thursday	March 02, 2023

For each of these months, the first day of the month did not land on a Friday, Saturday, Sunday or holiday (with the exception of Saturday, October 01, 2022 which was paid 17 days late). Even if I were to exclude October and November 2022, as the landlord alleges the landlord agreed to the late payments, the tenant was still late paying rent on 7 other occasions.

Residential Tenancy Branch Policy Guideline 38 [repeated late payment of rent] was developed to provide landlords and tenants a framework to understand issues relevant to this topic. It states that **three late payments** are the minimum number sufficient to justify a notice under the provision of section 47(1)(b). I find that the tenant was repeatedly late paying rent on 9 occasions between February 2022 and March 2023. Consequently, I uphold the landlord's notice to end tenancy issued under section 47(1)(b).

Section 55(1) requires that the director must grant the landlord an Order of Possession if the tenant is unsuccessful in disputing a landlord's notice to end tenancy and the notice to end tenancy complies with the form and content provisions of the Act. I have reviewed the notice to end tenancy and I find it complies with the form and content provisions as set out in section 52 of the Act.

As the effective date stated on the landlord's notice to end tenancy has passed, the landlord is awarded an Order of Possession effective two days after service upon the tenant.

The tenant's application was not successful and the landlord's was. As such, the landlord is entitled to recover the filing fee of \$100.00. In accordance with the offsetting

provisions of section 72, the landlord may retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced 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: July 19, 2023

Residential Tenancy Branch