



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON GROUP PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On April 24, 2023, the Tenants 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. Tenant O.P. advised that he recently changed his legal name, so the Style of Cause on the first page of this Decision has been amended accordingly. D.M. and J.R. attended the hearing as agents for the Landlord.

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 was discussed, and there were no issues concerning service. As such, I am satisfied that the Landlord was duly served with the Tenants’ Notice of Hearing package.

O.P. was not sure if they served their evidence to the Landlord. D.M. advised that the Landlord was not served with any documentary evidence by the Tenants. As such, I am

satisfied that the Tenants did not serve their evidence to the Landlord. Consequently, I have excluded this evidence and will not consider it when rendering this Decision.

D.M. advised that the Landlord's evidence was served to the Tenants by registered mail on July 24, 2023, and O.P. confirmed that this was received. As such, I have accepted this evidence and will consider it 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

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants 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 September 1, 2019, that the rent was currently established at \$1,293.00 per month, and that it was due on the first day of each month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were 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 Tenants by being attached to their door on April 21, 2023. The Landlord served the Notice because the “Tenant is repeatedly late paying rent.” The effective end date of the tenancy was noted as May 31, 2023, on the Notice.

D.M. advised that the Tenants have had a long history of repeated late payment of rent. He testified that the Tenants were late paying their rent in July and August 2022, and he then served them with a breach letter informing them that their tenancy would be jeopardized if they continued to pay rent late. He stated that they proceed to pay rent late for September, October, and November 2022, but he did not serve them with a notice to end their tenancy because it would have been effective around the holiday season. He then advised that the Tenants were again late paying rent in April 2023. He referenced the documentary evidence submitted to support these submissions of repeated late payment of rent.

O.P. did not dispute D.M.’s testimony about their instances of repeated late payments of rent, but he provided reasons for paying rent late. These were primarily due to personal circumstances.

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*. 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 Tenants are 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.

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 testimony is that the Tenants were required to pay all of the rent by the first day of each month. Furthermore, rent was not paid in full on the first day of each month 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.

As there is no evidence before me permitting the Tenants to pay the rent late, contrary to the terms of the tenancy agreement stipulating that rent was due on the first day of each month, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance 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 on **August 31, 2023, at 1:00 PM after service of this Order** on the Tenants.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenants' Application is dismissed without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective on **August 31, 2023, at 1:00 PM** after service on the Tenants. Should the Tenants 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: August 10, 2023

Residential Tenancy Branch