



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

All 4 tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began on February 1, 2020 and the tenants still reside in the rental unit, although the landlord doesn't know how many tenants or everyone's names. The tenancy agreement, a copy of which has been provided for this hearing, names 2 tenants, neither of whom still reside on the property. When the lease was signed, there were several tenants and a few moved out, and new ones moved in. It was their decision. The lease was renewed in 2020 and only 2 people were named on it as

tenants. One of them moved out in May, 2022 and the landlord is not sure when the other one moved out.

Rent in the amount of \$4,104.00 was payable on the 1st day of each month, which has been increased to \$4,248.87 effective July 1, 2023 and there are no rental arrears. At the outset of the tenancy in 2018 the landlord collected a security deposit from the tenants in the amount of \$2,000.00 as well as a pet damage deposit in the amount of \$2,000.00, both of which are still held in trust by the landlord. The rental unit is a single family house.

The landlord further testified that on April 24, 2023 the landlord served the tenants with a One Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy of the Notice has been provided by the tenants for this hearing and it is dated April 24, 2023 and contains an effective date of vacancy of May 31, 2023. The reason for issuing it states: Tenant is repeatedly late paying rent.

One of the tenants took over with pre-authorized payments starting on June 1, 2022. However, the payments for July, August, September, November and December, 2022 all bounced, as well as the payment for April, 2023. The landlord received the following payments:

- July 6 and 7, 2022 in 2 installments;
- August 10 and 12, 2022 in 2 installments;
- September 1 and September 7, 2022 in 2 installments;
- November 1 and November 16, 2022 in 2 installments;
- December 4 and December 8, 2022 in 2 installments;
- April 19 and April 20, 2023 in 2 installments.

In April, 2023 the landlord contacted the tenant to notify him of the missed payment, and the tenant said something was wrong with his banking and would get back to the landlord, but didn't until April 19. The tenant ought to have told the landlord about it in advance, and the situation is getting more severe.

In December, 2022 the landlord emailed all of the tenants saying it was not working and asked them to discuss it among themselves. The second installment made in December, 2022 in the amount of \$1,080.00 actually came from another tenant who had moved out and said she was not aware of the arrears.

The landlord has issued 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, copies of which have been provided for this hearing. They are dated August 10, 2022; December 23, 2022 and April 19, 2023.

The first tenant (CM) testified that the One Month Notice to End Tenancy for Cause applies to all 4 tenants, however the issues weren't caused by all of the tenants and is irrelevant to some of the tenants. Eviction is unfair. The tenant was also unclear to the fact that the tenant was classified as a sublet in relation to the people on the lease signed in 2020; the tenant was told that they could all sign it but it was difficult to get all 6 tenants together. If the tenant didn't sign the lease, the tenant was told it was okay.

The late payments don't apply to all tenants; 2 of the tenants only moved into the rental unit in February, 2023. The tenant was made aware of a late payment in August, 2022 and thought it was a one-off, but didn't know about the others. The tenants all send money to the tenant set up with pre-authorized payments, and the tenant has provided e-transfers showing his portion.

The tenants decided to move on to another person as the person paying the landlord. Between July and December, 2022 the landlord didn't communicate any late payments to anyone else in the house. Then the tenants discovered a bank issue. The tenants wanted to start over with a new person who didn't have bank issues. It's settled, and the landlord no longer has to worry about late rent payments.

The second tenant (JDM) testified that all late payments were his responsibility, which was transferred to him in June, 2022; no one else stepped in to do so. In April, 2023 rents for June, July and August were to be paid by another tenant.

The tenants are trying to get a new lease, but communication broke down. The tenant gave information to the landlord about what was happening and whether or not a bank issue would surface, but didn't get a response. The tenant didn't believe it would be an issue.

The third tenant (RA) testified that her situation is a bit different. She arrived in February, 2023, unaware of any previous issues; no one communicated that to her nor did she receive notices. The tenant was not aware that none of the tenants were on the lease.

The tenant attempted to get a meeting with the landlord so he could meet the 2 new tenants, but communication for that fell through and was not raised again by the landlord. When the tenants received the late rent notice and eviction notice, only 1 late

rent applied to either of the new tenants, just the most recent one. They emailed the landlord saying that the late rent didn't apply to them, and gave proof that rent was paid on time. They also asked for a new lease, but the landlord never responded.

Then the tenant took over finances starting in June, 2023. Then in July and August rent was taken out late. The tenant emailed the landlord and received a response saying it was due to the holiday and would be taken out on the 4th, but wasn't until the 14th. There was no correspondence from the landlord going forward for the rest of the month or the next month. It's been difficult to reach the landlord.

The fourth tenant (EC) testified that the tenant didn't realize that previous issues existed. Everyone has been contacting the landlord for quite awhile about a new lease, but there has been no contact. The first time the tenant talked to the landlord was when a notice to end the tenancy about late rent was received.

Analysis

Where 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 *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*.

A minimum of 3 late payments must be proven by the landlord to end a tenancy for repeated late rent. In this case the tenants do not dispute that rent has been paid late on more than 3 occasions since December, 2022. Where rent is due, it must be paid when it is due, regardless of how many tenants contribute.

I accept that the tenants have discussed and decided to have someone else collect rent from other tenants and pay it to the landlord on time. However, it is not for me to "forgive" the tenants, but it is for me to determine whether or not the landlord has proven a minimum of 3 late payments at the time that the Notice was given. I find that the landlord has done so. Therefore, I dismiss the tenants' application in its entirety.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2

days notice to the tenants. The tenants must be served with the order, which may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenants have not been successful with the application the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 27, 2023

Residential Tenancy Branch