



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL; CNC, FFT

Introduction

This hearing dealt with the landlord's application for dispute resolution, filed on April 24, 2023, under the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, under section 55 of the *Act*; and
- authorization to recover the \$100.00 filing fee paid for his application, under section 72 of the *Act*.

This hearing also dealt with the tenants' application, filed on April 21, 2023, under the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated April 6, 2023, and effective on May 31, 2023 ("1 Month Notice"), under section 47 of the *Act*; and
- authorization to recover the \$100.00 filing fee paid for their application, under section 72 of the *Act*.

The landlord, the landlord's two agents, agent SIT ("landlord's agent") and agent MM ("landlord MM"), the two tenants, tenant EG ("tenant") and "tenant PV," and the tenants' support person attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The hearing lasted approximately 63 minutes from 9:30 a.m. to 10:33 a.m. The tenant and the tenants' support person called in late at 9:35 a.m. Tenant PV joined this hearing late at 9:41 a.m., in the same room as the tenant and the tenants' support person. I did not discuss any evidence in the absence of the tenants or their support person.

During this hearing, I informed both parties that the maximum hearing time was 60 minutes, and that it could be adjourned to a later hearing date to complete, if required. Both parties listened to a pre-recorded hearing message when they first called into this hearing, indicating that this hearing was scheduled for 60 minutes.

The landlord intended to call “witness SD” to testify at this hearing. He left the hearing at 9:32 a.m., and returned and left again at 10:29 a.m. He did not testify at this hearing, and he did not hear evidence from either party.

At the end of this hearing, the landlord’s agent affirmed that the landlord did not want to call witness SD to testify, the landlord understood and agreed that he had the opportunity to do so, and he did not want an adjournment of this hearing to have witness SD testify because he did not want to delay this proceeding.

All hearing participants confirmed their names and spelling. The landlord’s agent and the tenant both provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord stated that he and the landlord’s agent, who is his wife, co-own the rental unit. He said that his agent had permission to speak on his behalf. He identified his agent as his primary speaker. The landlord’s agent provided the rental unit address. She said that landlord MM had permission to assist her and the landlord at this hearing.

Landlord MM initially indicated that she was a witness for service of documents, but the landlord’s agent asked that landlord MM stay for the entire hearing and assist the landlord with providing evidence regarding the tenancy. The tenants did not object to same. Therefore, I find that landlord MM was an agent, rather than a witness, for the landlord. She provided her testimony regarding service of documents at the outset of this hearing.

The tenants identified the tenant as the primary speaker. The tenant affirmed that the tenants’ support person was only present for support, not to testify. The tenants’ support person did not testify at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed that they would not record this hearing.

Preliminary Issue – Hearing and Settlement Options

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties affirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications. Both parties were given multiple opportunities to settle at the beginning and end of this hearing, but they declined to settle.

I cautioned the tenants that if I upheld the landlord's 1 Month Notice and ended this tenancy, I could issue an order of possession as early as 2 days, against the tenants. The tenants affirmed that they were prepared to accept the above consequences if that was my decision.

I cautioned the landlord and his agents that if I cancelled the landlord's 1 Month Notice, I could not issue an order of possession against the tenants and this tenancy could continue. The landlord and the landlord's agent repeatedly affirmed that they were prepared to accept the above consequences if that was my decision.

Preliminary Issues – Service of Documents and Amendment

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlord's application.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application.

Landlord MM stated that the tenants were served with the landlord's 1 Month Notice on April 6, 2023, by way of registered mail. The tenant confirmed receipt on April 20, 2023, by way of registered mail. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on April 20, 2023.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's first name. The landlord's agent and the tenant consented to

this amendment during this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is either party entitled to recover the filing fee paid for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below. The testimony regarding the bylaw infractions and the other 3 reasons on the 1 Month Notice, aside from the repeated late rent, is not included below, as I did not make a decision on the merits of same.

Both parties agreed to the following facts. This tenancy began on November 1, 2019. Monthly rent in the current amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. The tenants continue to occupy the rental unit.

A copy of the 1 Month Notice was provided for this hearing. Both parties agreed that both parties' names, addresses, and the landlord's signature appear on the first page of the notice. Both parties agreed that the signed date of April 6, 2023, and the effective date of May 31, 2023, appear on the first page of the notice. Both parties agreed that the landlord issued the notice to the tenants for the following reasons (which were read aloud by landlord MM and confirmed by the tenant during this hearing):

- *Tenant is repeatedly late paying rent.*
- *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;*
 - *put the landlord's property at significant risk.*

The landlord's agent testified regarding the following facts. The rent was repeatedly late every month. It is due on the first day of the month. The landlord provided a statement of account as evidence. The landlord had to drive several times to the tenant's rental unit to pick up rent. Sometimes the tenants did not answer their door, sometimes they were not there, and sometimes they would give a portion of rent and ask the landlord to come back for the rest of the money. The tenancy agreement says that rent is due on the first of the month. There is \$225.00 owing for rent, as of August 2023. There is \$25.00 owing from March 2023. The previous hearing was the same issue. The tenants were given a warning at the previous hearing to pay rent on time. That was from February 28, 2022. The tenants paid the following rent amounts on the following dates in the year 2023:

- \$1,845.00 on January 6, 2023 and \$355.00 owed;
- \$355.00 on January 25, 2023;
- \$2,200.00 on February 1, 2023;
- \$2,000.00 on March 7, 2023, and \$200.00 owed;
- \$2,375.00 on April 2, 2023, and \$25.00 owed;
- \$2,200.00 on May 1, 2023, and \$25.00 owed;
- \$2,200.00 on June 2, 2023, and \$25.00 owed
- \$2,200.00 on July 4, 2023, and \$25.00 owed;
- \$2,000.00 on August 2, 2023, and \$225.00 dollars total owed.

Tenant PV testified regarding the following facts. Rent was always there for the landlord to pick up on the first day of each month. The landlord and tenant PV communicated about the rent pickup. The tenants called every month for the landlord to pick up the rent. If the rent was a "couple days late," the tenants called the landlord and he said he was ok. The tenants were "a little late with a couple hundred dollars." There was no issue until now. Tenant PV always communicated with the landlord. Regarding the \$25.00 owing, the tenants saw a mouse and bought traps and the landlord said it was ok. The landlord never brought the \$25.00 to the tenants' attention.

The tenant testified regarding the following facts. If the first of the month falls on a holiday or the weekend, the tenants can pay rent on the following Monday. The landlord never had a problem until now. The landlord would delay coming to pick up the rent and was a day or two late. The rent was on time but never "passed hands" until the landlord showed up. The tenants agree with the landlord's above dates and amounts for rent payment, as stated by the landlord's agent at this hearing. They agree that they owe \$25.00 but that was used for the rodent problem. The landlord sent an exterminator, and he never came back. There was a huge hole in the house with rats.

The tenants paid \$200.00 for traps for the mice and told the landlord but he did not respond. The tenants invited the landlord to come into the home to look at the rodent problem. The tenants did not have written permission from the landlord to deduct any amounts from rent. They contacted the landlord two times and followed section 33 of the *Act* but did not provide any invoices or receipts to the landlord for emergency repairs. They were never asked for any documents by the landlord.

The landlord's agent stated the following facts in reply. She disagrees with the tenants. Rent is due on the first day of the month and the landlord was always there to pick it up on the first day of the month. She thinks that each tenant pays half of the total amount for rent. The tenant sometimes tells the landlord that she has to go to the bank, so the landlord drives to the bank and waits while she withdraws rent money, which is already late. The landlord told the tenants that rent is due on the first day of the month. The landlord has a mortgage to pay, and the bank is not ok if he is late. Tenant PV has promised to pay the rent on time. Tenant PV argues with the landlord. The landlord's agent has sat in the van and watched while the landlord picks up rent from the tenants. The landlord sent a pest control person who waited 15 to 20 minutes, the tenants never opened the door, so the landlord was charged \$78.75 and the receipt was provided in the landlord's evidence. The landlord never told the tenants it was ok to deduct any money from rent. The tenants were warned in the previous hearing not to pay rent late. The tenants never brought up deducting the rent.

Tenant PV stated the following facts in reply. He and the landlord joke around and have "smiles" and get along. It is incorrect what the landlord's agent said. He has never seen the landlord's agent come to pick up the rent with the landlord, she has never come to "say hello," and she has not been in the car waiting for the landlord.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by filing an application for dispute resolution within 10 days after the tenants received the notice. The tenants received the 1 Month Notice on April 20, 2023 and filed this application to dispute it on April 21, 2023. Therefore, the tenants are within the 10-day time limit under the *Act*. Accordingly, the burden shifts to the landlord to prove the reasons on the notice. During this hearing, I informed both parties about the above information and they affirmed their understanding of same.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the landlord provided sufficient affirmed testimony and documentary evidence for this hearing.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement. Both parties agreed that they signed a written tenancy agreement for this tenancy, indicating that rent is due on the first day of each month.

The tenants claimed that if the first day of the month fell on a holiday or a weekend, they were not required to pay until the following Monday. However, neither the *Act*, nor the parties' tenancy agreement indicates same.

The tenants agreed that they paid rent late, according to the dates and amounts provided by the landlord's agent during this hearing. The tenants agreed that they did not pay rent of \$225.00 total, which is still outstanding as of August 2023, because they used it to deal with a rodent problem. However, the tenants agreed that they did not have written permission from the landlord to deduct any amounts from rent and they did not follow the procedure in section 33 of the *Act* for emergency repairs by providing invoices or receipts to the landlord.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." I find that the tenants were late paying rent on January 6, January 25, March 7, April 2, June 2, July 4, and August 2 in this current year of 2023. Accordingly, I find that the tenants were repeatedly late paying rent more than 3 times during this tenancy. I find that the tenants did not have an order from an Arbitrator to deduct any amounts from rent, they did not follow the procedure in section 33 of the *Act* for emergency repairs, and they did not have the landlord's written permission to deduct any amounts from rent. I also find that a rodent problem is not defined as an emergency repair, as per section 33 of the *Act*. I find that the landlord's 1 Month Notice was issued for a valid reason. As I have found 1 reason on the 1 Month Notice to be valid, I do not need to examine the other 3 reasons.

Section 55(1) of the *Act* reads as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Accordingly, I grant the landlord's application for an order of possession against the tenants. Therefore, I dismiss the tenants' application to cancel the landlord's 1 Month Notice, without leave to reapply.

I issue an order of possession effective two (2) days after service on the tenants, pursuant to section 55 of the *Act*. The effective date on the 1 Month Notice of May 31, 2023, has long passed, as this hearing occurred on August 10, 2023. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

I find that the tenants did not pay full rent for August 2023 to the landlord. The tenants still owe outstanding rent of \$225.00 to the landlord. Therefore, I find that the tenants are not entitled to possession of the rental unit until the end of August 2023. Neither party made submissions during this hearing, regarding the effective date of an order of possession, if I issued same. Pursuant to Residential Tenancy Policy Guideline 54, I am entitled to issue a 2-day order of possession against the tenants.

I find that the landlord did not waive his right to enforce the 1 Month Notice by accepting rent from the tenants, after the effective date on the notice of May 31, 2023. The tenants did not pay full rent to the landlord, as \$225.00 is still outstanding as of August 2023. The landlord did not withdraw his notice, he continued to pursue an order of possession against the tenants at this hearing, the tenants filed a dispute of the notice in this application, and the tenants disputed the notice at this hearing. I find that the landlord did not agree to late payment of rent by the tenants, even if it was paid late by the tenants for a period of time.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone 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.

I order the landlord to deduct \$100.00 total from the tenants' security deposit of \$1,100.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$1,000.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenants' entire application is dismissed without leave to reapply.

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