



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Burnaby Lougheed Lions Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The Tenant filed an Application for Dispute Resolution on May 23, 2023, seeking an order cancelling the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 14, 2023.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant for this hearing.

Preliminary Matter –participants’ service of evidence

At the start of the hearing, the Tenant confirmed they received the Landlord’s response evidence that the Landlord forwarded to them via registered mail. I give the Landlord’s evidence full consideration in this matter where relevant and necessary.

The Tenant in the hearing stated they did not forward their prepared documentary evidence to the Landlord. The Tenant served the corporate entity that is the business that oversees the administration of the rental unit property; however, the Tenant stated they did not provide evidence to the Respondent Landlord who attended the conference call hearing.

The *Rules of Procedure* mandate full disclosure of all evidence that a participant intends to rely on in this administrative process. I find the Tenant did not disclose evidence as required, and consideration of that evidence without disclosure would prejudice the Landlord who attended

the hearing. For this reason, I do not consider any of the evidence the Tenant provided to the Residential Tenancy Branch for this hearing.

Issues to be Decided

Is the Tenant entitled to cancellation of the One Month Notice to End Tenancy?

Should the Tenant be unsuccessful in cancelling the Notice, is the Landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Background and Evidence

In their evidence the Landlord provided a copy of the original tenancy agreement (*i.e.*, Residential Tenancy Agreement Non-Profit Housing) for this tenancy that started on September 1, 2012. At the time of the hearing, the rent was \$465, which is the portion of the full rent that the Tenant contributes.

The Landlord in the hearing drew attention to clause 11 in the tenancy agreement which sets out the Tenant “must pay rent to the landlord in advance on or before the first day of each calendar month. . .”

The Tenant in the hearing provided that they have been in the rental unit property for 16 years, since 2007. The Tenant provided that the subsidy amounts for their rent changed over the last year, with their own contribution being reduced when they went for a medical procedure.

The Landlord provided a copy of the One-Month Notice document signed by the Landlord on May 12, 2023. The Landlord served this document by attaching it to the door of the rental unit. The Tenant confirmed they received a full three-page document that was this One-Month Notice, though they drew a distinction between the Landlord’s signature on their own copy that differs from the signature on the copy the Landlord provided in evidence – in all other details, the document is identical.

The One-Month Notice provided the move-out date of June 30, 2023. On page 2 of the document, the Landlord provided the two reasons they served the One-Month Notice: Tenant is repeatedly late paying rent; and “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

On page 2 of the document, the landlord provided details:

Habitual Late Payee
5 Day Notices of Arrears (Issued Monthly)
Current Balance Owing \$705

In their evidence, the Landlord provided a copy of a “Tenant Ledger” showing the Tenant’s name and the rental unit number, dated from August 1, 2022 to May 25, 2023. The document has the basic rent charge of \$1,041 before the subsidy rent reduction is applied. This shows:

- August 2022: rent payment by the Tenant of \$746 on August 3rd, and \$465 on August 19th
- September 2022: rent payment by the Tenant of \$746 on September 3rd
- October 2022: no rent payment by the Tenant
- November 2022: payment by the Tenant of \$649 on November 9th
- December 2022: payment by the Tenant of \$465 on December 9th
- January 2023: payment by the Tenant of \$465 on January 5th
- February 2023: no rent payment by the Tenant
- March 2023: payment by the Tenant of \$930 on March 7th
- April 2023: payment by the Tenant of \$465 on April 4th
- May 2023: no payment of rent by the Tenant

The Landlord, on my clarification in the hearing, drew attention to the rent for each month of October 2022 (no payment), and February and March 2023 (no payment), when rent payment is apparently deferred to March 7, for an amount of \$965.

The Tenant described having communication open with head office, meaning that the Landlord was aware of late payments. The Tenant described having a medical procedure in 2022; because of this they were off work, and this complicated matters with their employment income and having to return to work. They contacted “senior administration” at the Landlord’s head office, letting the Landlord know the situation and did “subsidy renewals” to account for differences. They addressed one month of missing rent with head office, acknowledging that there were some late rents.

The Tenant stated in particular they contact head office, *i.e.*, “senior administration”, to explain things, refusing to deal with the on-site manager who attended the hearing. This was a pattern that has been in place “for years”, and they would fully inform head office of their fluctuating income that would impact the rent subsidy they receive. The Tenant stated they had proof of this ongoing communication with head office; however, they did not provide it for this hearing.

They also spoke to head office about this One-Month Notice; however, head office redirected the Tenant back to the on-site manager.

The Tenant acknowledged ignoring any “arrears notice” that the Landlord would serve to them. They continued to pay the amount of \$465 and would ignore any notice from the Landlord about arrears.

Analysis

The *Act* s. 47 states, in part:

(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

The *Act* s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to s. 47 and I find the Tenant applied within the required time period to formally challenge the One-Month Notice. This is with consideration to the s. 90(c) deemed service provision, making the date of service of the document being May 15, that is the third day after the Landlord attached it to the Tenant’s rental unit door.

In this matter, the Landlord has the onus to prove that the reason indicated for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find the Landlord has met the burden of proof in this dispute resolution process. The record they provided shows the tenancy agreement stipulation that rent is payable on the 1st of each calendar month, and the ledger they provided showing consistent late payments, or no payments.

The Tenant stated they had communication ongoing with other members of the Landlord’s corporate head office. They did not provide any record of this to show that they had agreement or acknowledgement from the Landlord on their late payments or deferred payments. The Tenant’s statements describing this carry no weight in this dispute resolution hearing; in contrast, the Landlord provided documented proof of the Tenant’s payment pattern, showing late/no payments of rent throughout 2022 and 2023.

In summary, there is tangible evidence of the Tenant's late payments made over a significant period of time such as to form the basis to end this tenancy.

With the one of the reasons indicated on the One-Month Notice met with sufficient evidence by the Landlord in the hearing, I grant the Landlord an Order of Possession in line with s. 55 of the *Act*. This is based on my assessment of the One-Month Notice document that complies with s. 52 of the *Act* as required.

I grant the Landlord an Order of Possession effective two days after the Landlord serves it to the Tenant. I make no order for compensation of rent amounts owing to the Landlord, with no account or ledger information past the date of May 23, 2023 as shown in the record.

Conclusion

I dismiss the Tenant's Application in its entirety without leave to reapply.

I grant an Order of Possession to the Landlord, EFFECTIVE TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with the Order of Possession, the Landlord may file it with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 15, 2023

Residential Tenancy Branch