

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's One Month Notice for Cause (the One Month Notice) and an extension of the time limit to dispute the One Month Notice sections 47 and 66 of the Act

The Landlord's property manager JF (the Property Manager) and the building manager LG (the Building Manager) attended the hearing on behalf of the Landlord.

No one attended the hearing for the Tenant.

Preliminary Matters

- Updated Name of Landlord

Amended both applications to the legal business name of the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant did not attend the hearing or provide any evidence on how they served the Landlord with the Proceeding Package; however, as this is a cross application the Landlord attended the hearing.

The Building Manager advised they served the Proceeding Package and evidence via registered mail on January 8, 2024 and posted to the door of the rental unit. A Canada Post tracking number was provided. The Canada Post tracking number shows the Proceeding Package and evidence was returned to sender because the Tenant did not retrieve the registered mail after notices were left.

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Proceeding Package. This means the Landlord must provide proof that the documents were served at a verified address in a method allowed under s.89 of the Act and I must accept that evidence.

The Proceeding Package and evidence was served on the Tenant at the rental address, where they are currently residing. As stated in Policy Guideline 12, where a document is served by Registered Mail the refusal of a party to accept or pick up the item, does not override the deeming provision. From the testimony of the Property Manager and Building Manager and evidence, I find they served the Tenant in accordance with s.89(1)(c) of the Act. By applying s. 90(a), I deem the Proceeding Package received by the Tenant the fifth day after the registered mailing.

Service of Evidence

The Property Manager and Building Manager advised they did not receive any evidence from the Tenant. As the Tenant did not attend the hearing or provide any proof of service, per Rule of Procedure 3.17, I am excluding the Tenant's evidence from consideration as the Landlord never received it.

Based on the submissions before me and the analysis above, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2010, with a monthly rent of \$991.00, due on first day of the month, with a security deposit in the amount of \$375.00.

The Landlord served a One Month Notice for Cause on October 5, 2023 and the reasons for cause selected are the Tenant is repeatedly late paying rent and has put the Landlord's property at significant risk (the One Month Notice). the Tenant applied to dispute the One Month Notice November 30, 2023.

The undisputed evidence of the Property Manager and Building Manager is that the Tenant is consistently late paying rent. The Building Manager Advseid the rent ledger was provided as evidence to show the Tenant almost always pays rent late. For example, the rent ledger shows that rent was late in 2023 for February 2023, March 2023, April 2023, May 2023, July 2023, August 2023, October 2023. The Building Manager advseid they gave 10-Day Notice for April 2023, August 2023, and October 2023, but the Tenant always pays rent before the deadline is up. Additionally, the Property Manager added the Tenant has not paid rent since the One Month Notice was issued. The undisputed evidence of the Building Manager is that the Tenant was advised they needed to pay rent on time and was given 10-Day notice, but the Tenant eventually just stopped responding to any communication about paying rent on time.

The undisputed evidence of the Landlord is that the Tenant has put the Landlord's property at significant risk by operating a bike and bicycle repair shop out of the rental unit and parking spot and having unapproved guests living in the rental unit. The Property Manager and Building Manager argued the Tenant is fixing and storing bikes on the balcony of the rental unit, which is ready to collapse.

The Tenant did not attend to present any evidence on why they should be awarded more time to dispute the One Month Notice or to dispute the claims of the Landlord.

Analysis

Is the Tenant Entitled to More time to Cancel the Landlord's One Month Notice?

Section 46 of the Act states that upon receipt of a One Month Notice, the tenants must, within ten days, file an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the One Month Notice. If the tenants do not dispute the One Month Notice they are conclusively presumed to have accepted the end of the tenancy under section 47(5).

The Tenant did not attend the hearing to present any evidence for why they are entitled to more time to cancel the One Month Notice.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Pursuant to section 49(9) of the Act, if a tenant fails to dispute the One Month Notice within the timeframe required, they are conclusively presumed to have accepted the end of the tenancy. As the Tenant did not attend to present any evidence, I decline to grant an extension of the time limit to dispute the One Month Notice.

For the above reasons, the Tenant's application for cancellation of the One Month Notice and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act is dismissed, without leave to reapply. As such, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy.

Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions. Additionally, it goes on to state that "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".

Based on the undisputed testimony of the Property Manager and Building Manager, and the rent ledger, I find that the Tenant was repeatedly late paying rent over 3 times in 2023. Additionally, given that the Tenant was issued 10-Day Notices for late payment of rent and the undisputed testimony of the Property Manager and Building Manager about communication with the Tenant about paying rent on time, I find that the past conduct of the Landlord supports strict compliance with the requirements to pay rent in accordance with the tenancy agreement. Based on the above, I find that the One Month Notice was issued for a valid reason.

Given that I have found that the Landlord has established they had sufficient grounds to issue the One Month Notice under the Tenant being repeatedly late payment of rent, I will not address the other reason cited by the Landlord to end the tenancy.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the One Month Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession. Given that the Tenant has not paid rent since October 2023 and has not attended the hearing to present any evidence, I grant an Order of Possession for February 29, 2024.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on February 29, 2024, after service of this Order on the Tenant**. Should the Tenant 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.

Pursuant to section 72(2)(b), the Landlord is authorized to deduct \$100.00 from the security deposit to recover their filing fee.

The Tenant's application for cancellation of the One Month Notice under section 47 of the Act and for more time to dispute the One Month Notice 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 Act.

Dated: February 22, 2024

Residential Tenancy Branch