



Dispute Resolution Services

DECISION

Introduction and Preliminary Matters

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on November 23, 2023. The Tenant seeks:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause, signed by Y.F. on November 2, 2023 (the **Notice**).
- Their \$100.00 filing fee.

The Landlords filed their application on November 24, 2023, and seek the following:

- An order of possession pursuant to the Notice.
- Their \$100.00 filing fee.

At the start of the hearing Y.F. testified that their name, along with A.S.' name, have been incorrectly spelled by the Tenant. I amended the Tenant's application after the hearing. The style of cause on the cover page of my decision reflects the correct spelling of the Landlords' names.

Service

The Landlords acknowledged that they received the Tenant's Proceeding Package by registered mail, in accordance with section 89 of the *Act*. The Tenant submitted tracking numbers for the associated packages, which I have copied on the cover page of my decision. Pursuant to the Landlords' acknowledgments, I find that the Tenant served their Proceeding Package to the Landlords in accordance with section 89 of the *Act*.

The Tenant had until January 24, 2024, to serve their records to the Landlords. The Landlords testified that the Tenant served them with an initial batch of documentary evidence on January 25, 2024, and a second batch of records on February 7, 2024, the day prior to the hearing. The Tenant submitted the second batch of their records to the Residential Tenancy Branch website on February 7, 2024. The Landlords testified that they did not have time to review the Tenant's second batch of records that were submitted less than 24 hours prior to the hearing.

The Residential Tenancy Branch Rules of Procedure dictate these proceedings. Rule 3.11 states that "evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of

evidence, the arbitrator may refuse to consider the evidence.” In this case, the Tenant submitted a second batch of records to both the Residential Tenancy Branch and the Landlords the day prior to the hearing, the bulk of which is a written statement which the Tenant themselves admitted at the hearing is not accurate and must be fact checked. The Landlords testified they have not had time to review this written statement in detail to check dates and figure. I exclude the written statement titled “Applicant Chronology of Relevant Times and Documents” due to non-compliance with Rule 3.11 and because both parties agreed that the dates and figures in the statement cannot be relied upon. I informed the Tenant at the start of the hearing that they can provide oral testimony regarding the statement’s contents. The Tenant testified that they understood.

The balance of the second batch of submitted documents is not relevant evidence and I have not relied on them in making my decision.

Y.F. testified that they served the Tenant with their Proceeding Package and the bulk of their documentary evidence by registered mail, on November 29, 2023. The Tenant acknowledged that they received the Landlord’s registered mail package with the documents testified to by Y.F.

Y.F. also testified that they served the Tenant with a second batch of records shortly prior to the hearing, by email, pursuant to an approved sub-service order from the Residential Tenancy Branch (I have reviewed the Residential Tenancy Branch’s records and on December 1, 2023, the Landlords were granted an order for substituted service to the Tenant by way of email). The Tenant acknowledged that they received the Landlords’ email and that they reviewed its contents.

Pursuant to the parties’ testimonies, I find that the Landlords served their application and documentary evidence to the Tenant in accordance with sections 88 and 89 of the *Act*.

Background and Evidence

The parties agreed that the Tenant began residing at the Rental Unit on September 26, 2015, pursuant to a previous tenancy agreement between the Tenant and the previous owners of the property in which the Rental Unit is in. The parties agreed that they signed a tenancy agreement on October 26, 2020. The parties agreed that rent is due on the first day of every month, and that the Tenant’s rent in 2023 was \$1,744.00 per month.

The Tenant testified that they paid a security deposit to the previous owner of the Rental Unit, in the amount of \$825.00. The Landlords acknowledged that this amount is correct.

Y.F. testified that they placed the Notice, which was issued to the Tenant for repeated late payments of rent in 2023, in the Tenant's mailbox on November 2, 2023, the same date it was signed, and they emailed the Tenant to inform them of the Notice. They testified that they attached the Notice to the notification email and also sent the Tenant a text message. The Notice has an effective date of December 12, 2023. The Notice is dated and signed, but the Rental Unit's unit identifier is not listed on the Notice.

On page two of the Notice, the Landlords have selected the following ground for ending the tenancy: "Tenant is repeatedly late paying rent". Under the details of events section of the Notice, the Landlords have written the following:

Details of the Event(s):

~~Nov 1 - partial payment of \$ 144.00~~

Mar 4 - partial payment of \$ 444.00

Mar 2 - partial payment of \$ 1,300.00

Jun 3 - partial payment of \$ 344.00

Jun 2 - partial payment of \$ 900.00

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Sep 2 - late payment of \$ 1744.00

Feb 2 - late payment of \$ 1744.00

Jan 3 - late payment of \$ 1,710.00

The Tenant initially testified that they could not recall receiving an email from the Landlords on November 2, 2023. They then testified that they did receive the email which included the Landlords' Notice, on November 2, 2023, but they did not receive a hard copy of the notice until November 16, 2023, when they returned from vacation.

The Tenant testified that they returned from vacation on November 16, 2023, after being "away for about a week".

The Tenant testified that when they received the Notice by email, they responded to the Landlords and informed them that November rent has been paid on time. They testified that there are two versions of the Notice. The two versions, they testified, are identical, except for a crossed-out sentence in the details of events section in the second version.

Y.F. testified that they made a mistake by including “Nov 1” in the details of events section of the Notice, but they realized it almost immediately and upon realization they went to the mailbox, crossed off the relevant sentence (see screenshot above) and put it back in the mailbox. They testified that all these events took place on November 2, 2023.

The Tenant testified that after they emailed the Landlords about their mistake regarding November 2023, they considered the matter resolved.

A.S. testified that the Tenant was at the Rental Unit on November 2, 2023, but chose not to go to their mailbox to take delivery of the Notice. The Tenant acknowledged that they were in town on November 2, 2023, and had not yet gone on vacation.

Y.F. asked the Tenant when they went on vacation. Y.F. testified that they saw the Tenant’s vehicle in front of the Rental Unit for several days after November 2, 2023. The Tenant did not directly answer Y.F.’s question and instead testified that they did not check their mailbox prior to leaving because they believed the matter to have been resolved. They next checked their mailbox on November 16, 2023, after they returned from vacation.

The Landlords testified that the Tenant paid nearly half of their 2023 rent payments late, as reflected in the details of events section of the Notice.

The Tenant testified that they do not dispute any of the dates stated in the Notice. They testified that they had bank transfer limits, which they remedied and since November 2023, they have paid their rent early.

The latest date stated on the Notice is September 2, 2023. However, the Landlords testified that the Tenant was late again in February 2024. The Tenant testified that the issue in February 2024 was simply a result of them forgetting that the Landlord’s rent increase will be going into effect in February 2024.

The Tenant also testified that the Landlord increased the Tenant’s rent unlawfully during the pandemic era moratorium on rent increases, and therefore all future rent increases were unlawful. A.S. testified that the Landlords had relocated to British Columbia from Ontario, and they were unaware of the rules, and when the Tenant informed them of the rules, they were willing to back away from the rent increase, but the Tenant willingly agreed to the rent increase. The Tenant testified that they did agree to the \$20.00 rent increase in 2020, which came into effect on January 1, 2021.

The parties agreed that the Tenant's rent was not increased again until February 1, 2023, when it became \$1,744.00 pursuant to a Notice of Rent Increase form that was submitted as evidence.

The Landlords submitted a copy of another Rent Increase Form, signed by Y.F. on October 4, 2023, with an effective date of February 1, 2024. The Tenant testified that the October 4, 2023, rent increase was proof that the Landlords intended for this tenancy to continue and when the November 2023 Notice was issued, they had no grounds to issue the Notice because in November 2023 they paid their rent on time.

Analysis

Section 47 of the *Act* states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within time, the landlord bears the burden to prove the grounds for the One Month Notice.

However, section 47(5) of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

- Issues 1 and 2: when was the Tenant served with the Notice? Should I use my discretion to extend the statutory time limit established under section 47 of the *Act*?

The Landlords testified that they emailed, texted, and placed a copy of the Notice in the Tenant's mailbox on November 2, 2023. The Tenant acknowledged receipt of the Landlord's email on November 2, 2023, but they testified that email service is not acceptable, and they should have been served with a physical copy.

On the issue of service, the Tenant was evasive and argumentative. They provided a confusing testimony. The Landlords provided a clear testimony. The Landlords' testimony was internally and externally consistent. The Landlords submitted records showing their November 2, 2023, email, and text message, wherein the Notice is clearly attached to both. The Landlords testified that in their communication with the Tenant on November 2, 2023, the Tenant was informed that a physical copy of the Notice is in their mailbox.

The Tenant testified that they received the Notice in their mailbox on November 16, 2023, when they returned from vacation and checked their mailbox. However, upon further questioning it became clear that the Tenant was at the Rental Unit on November 2, 2023, when the Landlords say they served the Notice to the Tenant by placing it in the Tenant's mailbox.

The Landlords testified several times that in their email and text communication with the Tenant on November 2, 2023, they informed the Tenant that a copy of the Notice is placed in the Tenant's mailbox. This testimony went unopposed. Based on the parties' testimony, I find it more likely than not that the Landlords did place a physical copy of the Notice in the Tenant's mailbox on November 2, 2023.

In response to the Tenant's testimony that they did not receive the hard copy of the Notice until November 16, 2023, Y.F. asked the Tenant when the Tenant left on vacation, because they witnessed the Tenant's vehicle near the Rental Unit for several days after November 2, 2023. The Tenant did not answer Y.F.'s question and instead testified that they did not check their mailbox believing the matter to have been resolved.

It is clear to me, based on the parties' testimonies and the documentary evidence submitted by both parties, that the Tenant was aware of the Notice and did in fact receive the Landlords' email, with the Notice attached to the email, on November 2, 2023. Section 88 of the *Act* provides the ways in which parties may serve their counterparties with general records, such as notices to end tenancy. The Landlords in this case chose to place the Notice in the Tenant's mailbox, instead of utilizing a surer method, such as in person service. However, the Landlords took the extra step of informing the Tenant by email and text message that the Notice is placed in their mailbox. The Tenant then chose not to walk to their mailbox to pick up the hard copy of the Notice, perhaps because the Tenant was already in possession of digital copies of the Notice.

The Tenant acknowledged receipt of the Landlord's email and text messages, both of which have a copy of the Notice attached. The Tenant's own records show that in the days that followed, the Tenant was communicating with the Landlords regarding the merits of the Landlords' Notice.

Pursuant to section 71(2)(b), and the above findings, I find that the Notice was sufficiently served to the Tenant on November 2, 2023, for the purposes of the *Act*, by email.

I now turn my mind to section 66 of the *Act*, which provides me with the discretionary power to extend a time limit established by this *Act*, in exceptional circumstances. A time limit cannot be extended beyond the effective date of the notice in question. In this case, the Tenant had 10 days from November 2, 2023, to dispute the Notice. The Tenant did not do so. However, the Tenant filed their application prior to the effective date of the Notice.

In relation to what constitutes an exceptional circumstance, the Residential Tenancy Branch's Policy Guideline 36 states:

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In this case, the Tenant testified that they did not check their mailbox and largely ignored the matter because they believed the matter was resolved.

Evidence provided by the parties show that the Landlords believed the Tenant was late paying their rent in November 2023. This was outlined on page two of the Notice by the Landlords and then crossed off when the Tenant notified them on the same date that rent was paid the day before. Y.F. testified that upon realization, they went back to the mailbox, crossed off the November 2, 2023, date and placed the Notice back in the mailbox.

I find that in this case the failure to meet the relevant time limit was entirely caused by the Tenant and their conduct. The Landlords texted, emailed, and placed a copy of the Notice in the Tenant's mailbox and they also notified the Tenant that the Notice is in their mailbox. The Tenant then spent several days at the Rental Unit before going on vacation without going to their mailbox.

Even after the Tenant returned from vacation the Tenant waited until a week later to file their application to dispute the Notice.

I find that the Tenant did not take reasonable and appropriate steps to comply with the relevant time limit and I decline to use my discretion to extend the time limit.

Section 26(1) of the *Act* states 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.

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for cause when a tenant is repeatedly late paying rent.

In this case I have found that the Tenant was sufficiently served with the Notice for the purposes of the *Act* on November 2, 2023. Section 47 of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days of receiving the notice, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I find that the Tenant did not file their application in time and therefore they conclusively accepted that the tenancy ends.

However, even if I am wrong in my analysis above, I find that the Landlords issued the Tenant with a valid Notice, and they had cause to end the tenancy.

The Tenant does not dispute any of the following late payments stated on page two of the Notice:

- January 3, 2023 (late by two days)
- February 2, 2023 (late by one day)
- March 4, 2023 (late by three days)
- June 3, 2023 (late by two days)
- September 2, 2023 (late by one day)

In addition to the above, the Tenant did not pay their February 2024 rent on time. In their own application, the Tenant has also stated that they paid their October 2023 rent late (something that the Landlords did not include on their Notice).

The Tenant testified that all the 2023 late payments were the result of bank transfer limits, that were resolved in October 2023. The Tenant did not submit any documentary evidence to show that their transfer limit was the cause of the above late payments, and they did not provide any evidence to show that the transfer limit has now been increased.

The Residential Tenancy Branch Policy Guideline 38 provides the following regarding ending a tenancy for repeated late payments of 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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

I find that the Tenant was repeatedly late paying their rent. They paid half or more of their 2023 rent payments late. A bank transfer limit that they have control over is not an unforeseeable bank error. Therefore, even if a transfer limit was the cause, the Tenant could have fixed the issue earlier or even paid a portion of their rent prior to the start of every month to ensure rent would be paid on time.

The Supreme Court of Canada in *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744, stated that the post-notice conduct of the tenant is a relevant consideration in deciding whether an end to tenancy is justified. In this case, the Tenant was again late with their rent payment in February 2024. They testified that this mishap should not be considered because they forgot that their rent increase would go into effect in February 2024. I disagree. The Tenant has an obligation to pay their rent on time and to keep track of what they owe and when they owe their rent.

They further testified that this rent increase was unlawful because the Landlord’s rent increase in 2020 was unlawful and every rent increase that followed was consequently unlawful. With respect, the Tenant received a rent increase notice in October 2023 and chose not to dispute it. Whether that rent increase was valid or not has never been determined.

Finally, I have considered the Tenant’s waiver/estoppel argument and I find that the Landlords never impliedly or explicitly waived their right to issue the Notice in November 2023 simply because they issued the Tenant with a rent increase notice in October 2023. I dismiss the Tenant’s application to dispute the Landlords’ Notice.

Section 55 of the *Act* states that 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Rental Unit's unit identifier is not listed on the Notice. Section 68 of the *Act* states that if a notice to end a tenancy does not comply with section 52, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice.

I find that in the circumstances there is no dispute, disagreement, or misapprehension about where the Tenant is residing. The Tenant resides in the laneway/coach house of the property in which the Rental Unit is in. Both units have the same residential address, but the Landlords simply did not include the term "laneway" or "coach house" in the Notice. I amend the Notice pursuant to section 68 of the *Act* and find it reasonable to do so in the case, because this was not an issue that the Tenant argued, and I find that there is no misunderstanding about where the Tenant is residing. After the amendment, I find that the Landlords' Notice complies with the form and content requirement of the *Act*.

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Pursuant to section 55 of the *Act*, I order that this tenancy ends on March 31, 2024. I have discretion to extend the effective date of an order of possession in cases where the tenancy is long-standing. In this case, the Tenant is elderly, and the tenancy has been relatively long-standing. The Tenant has also been paying their rent, even if late. I find that it would be inappropriate to order this tenancy to end effective immediately.

The Landlords' application is granted in full. I award the Landlord their filing fee. Pursuant to section 72 of the *Act*, I authorize the Landlords to retain \$100.00 from the Tenant's security deposit in full satisfaction of my award of the filing fee.

The Tenant's application is dismissed in full.

Conclusion

The Tenant's application is dismissed in full, without leave to reapply. The Landlords' application is granted in full.

Pursuant to section 55 of the *Act*, I grant the Landlords an Order of Possession, which must be served to the Tenant as soon as possible, effective March 31, 2024, at 1:00 PM.

Pursuant to section 72 of the *Act*, I grant the Landlords their \$100.00 filing fee, to be collected from the Tenant. Pursuant to section 72 of the *Act*, I authorize the Landlords to retain \$100.00 from the Tenant's security deposit in full satisfaction of my award of the filing fee.

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: March 1, 2024

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