

DECISION

Introduction

This hearing dealt with Cross Applications including:

The Landlord's January 9, 2024, 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
- an Order of Possession based on a mutual agreement to end the tenancy under sections 44 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlord's January 26, 2024, 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

The Tenant's December 15, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

Preliminary Matters

The parties agreed that the Tenant did not serve the Landlord with Notice of their dispute of a One Month Notice to End Tenancy dated December 7, 2023. I therefore dismiss the Tenant's application and I do not give leave to reapply due to failure to serve as required by RTB Rule of Procedure 3.1.

I amended the Landlord's name on their two applications so that the Landlord is identified as a Trustee for the Two Trusts that owns the residential property. I made this amendment under RTB Rule of Procedure 7.7.

Service of Notice of Dispute Resolution from the Landlord

The Landlord provided proof of service by registered mail on the Tenant to the residential property, for Notice of the two dispute applications:

January 10, 2024
January 26, 2024

A review of tracking provided confirms that both packages were collected by the Tenant.

The Tenant testified that both packages were received.

Service of Evidence by the Landlord and Tenant

The Landlord provided proof of service of two evidence packages to the Tenant on February 14, 2024. I reviewed the tracking associated with these packages and confirm that neither were collected by the Tenant. I nevertheless deem the Tenant served with the Landlords evidence on February 19, 2024, under section 88 and 90 of the Act

The Landlord acknowledged receipt of a 3-package document from the Tenant as their evidence related to these disputes.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession based on either One Month Notice or a Mutual Agreement to end Tenancy?
- Is the Landlord entitled to recover the filing fee from the Tenant for their two applications?

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.

The Tenant has been residing in the residential property for approximately 15 years, and claimed they paid a \$1,1250.00 security deposit when the tenancy started with the father of the named Landlord in this dispute. The named Landlord indicated that they have no records of such a deposit.

The parties agreed that:

- Current rent is \$2,800.00 due on the first of the month.
- A one-month Notice to End Tenancy was issued on an RTB 33 on December 7, 2023.
- A separate one-month Notice to End Tenancy was issued on December 20, 2023

- Both Notices have stated move-out dates of January 31, 2024.
- The Tenant acknowledged receipt of both notices but only applied to dispute the December 7, 2023, Notice.
- The December 7, 2023, Notice was issued for repeated late payment of rent under 47(1)(b) of the Act.
- A July 1, 2023, custom mutual agreement was signed to end the tenancy September 28, 2023.
- The Tenant was late paying rent for October and November 2023.
- The Landlord issued a 10-Day Notice to End Tenancy under section 46 of the Act on December 2, 2023, after rent was paid late for December 2023.

The Landlord provided evidence of bank statements to demonstrate that the Tenant is regularly late paying rent including:

- June 2023 – paid on June 13, 2023
- May 2023 – paid on May 11, 2023
- April 2023 – paid on April 14, 2023
- February 2023 – paid on February 3, 2023
- January 2023 – Paid on January 10, 2023

The Tenant advised that they have two of their own tenants within the residential property. Counsel for the Landlord indicated that this is news to the Landlord and that the Landlord is concerned with the potential for property damage if the tenancy continues.

The Landlord requested an Order of Possession as soon as possible.

The Landlords grounds for the Notice dated December 20, 2023, were not discussed.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim as required by RTB Rule of Procedure 6.6.

Is the Landlord entitled to an Order of Possession based on the One Month Notice?

Section 47 of the Act states that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so under the Act.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord had grounds for issuing the December 7, 2023, Notice and that this is a valid Notice, because:

- The Notice was served to the mail slot/mailbox which is an accepted means of service under section 88 of the Act.
- The Notice was served on an RTB 33- Form which satisfies the requirements of 47(3) and 52 of the Act.
- RTB Policy Guideline 38 states that 3 late payments are a minimum to justify ending a tenancy under 41(1)(b) of the Act for repeated late payment of rent.
- I find that the Tenant is consistently late paying rent and does not reliably pay rent on a particular day each month as shown in evidence of the Landlord's 2023 bank statements.
- This does not include payment of rent for August or September 2023 because the custom July 2023 Mutual Agreement sets out that the Landlord will not charge rent for these two months.
- I find that the Tenant was also late paying rent for October, November and December 2023, the three months prior to the December 7, 2023, Notice, as shown in the details of cause for this Notice.

I find that the Landlord is entitled to 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.

I use my discretion under RTB Policy Guideline 54 to make this Order effective March 31, 2024, because rent has been paid for the month and the tenancy has been ongoing for approximately 15 years. This provides considerably more time for the Tenant than the standard two-days that was requested by the Landlord.

Is the Landlord entitled to recover the two filing fees for their applications from the Tenant?

I find that the Landlord was successful in their applications and are entitled to recover the two \$100.00 filing fees paid for this application under section 72 of the Act. I order that the Landlord retain \$200.00 from the Tenant's security deposit which the Tenant testified was paid.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on March 31, 2024, after service of this Order 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 that the Landlord retain \$200.00 from the Tenant's security deposit to satisfy their recovery of the application fee for this dispute.

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: March 5, 2024

Residential Tenancy Branch