

## **DECISION**

### **Introduction**

This hearing 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 to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and 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

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

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

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

### **Issues to be Decided**

**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 Tennant?**

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## **Facts and Analysis**

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

**Should the landlord's One Month Notice be cancelled? If not, Is the landlord entitled to an Order of Possession?**

Both parties agree that the monthly rent is due on the first day of the month.

The Landlord provided a statement of account and e-transfers showing the Tenant had paid rent late in January, September, October and November of 2023, and January 2024.

The Tenant confirms paying rent late these months. However, the Tenant's counsel provided a history of rent payments for the period from June 1, 2020, until to January 2, 2024, that show the Tenant was several days late paying rent 29 nine different times. The Landlord confirms the accuracy of the history.

The Landlord affirms that 10 Day Notices for Late Payment of Rent have been issued to the Tenant in the past, a fact which the Tenant denies. The LL affirms that no 10 Day Notice has been served to the Tenant in the past two years.

The Landlord provided copies of communications with the Tenant, reminding them that rent is due. The Landlord's communication is usually dated between two and seven days after the first of the month and none of them state that rent is due on the first of the month and must be paid on time.

The Tenant affirms that, because rent was frequently several days late and the Landlord did not tell him to pay on the first, he believed the Landlord did not view the Tenant paying several days late to be a problem.

Section 26 of the Act states a tenant must pay rent when it is due under the tenancy agreement. However, in *Nikkel v. Atira Women's Resource Society*, 2023 BCSC, it was found that the issue of estoppel should be considered. Promissory Estoppel is the legal doctrine that states that if someone reasonably relies on a promise and acts (or fails to act) in a way that causes them harm because of that promise, the promise can be enforced; the promise can be established by words or conduct.

I find that the Landlord, by not serving the Tenant any 10 Day Notices in the last two years, and by not pursuing a One Month Notice for Cause earlier, despite the Tenant being late with rent 29 times since June 1, 2020, created promissory estoppel, and lead

the Tenant to believe it was acceptable to be several days late with rent. None of the communications between the Landlord and Tenant reminding him to pay rent stated that rent was due on the first day of the month, nor that it was expected on the first day of the month. Furthermore, they were sent to the Tenant between 2-7 days after the rent was due, causing further uncertainty. Therefore, I find the communications between the Landlord and Tenant reminding him to pay rent were insufficient to remove the Tenant's belief that late rent payments were acceptable.

For the above reasons, the Tenant's application is granted for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice)

The One Month Notice of January 15, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the under section 72 of the Act is dismissed, without leave to reapply.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

## **Conclusion**

The One Month Notice of January 15, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant may deduct \$100.00 from the rent for May 2024, to recover the application fee.

I order that starting May 1, 2024, the Tenant shall pay rent on, or before, the day that it is due, and that rent is due on the first of each month.

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: April 9, 2024

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Residential Tenancy Branch