

DECISION

Introduction

This hearing dealt with applications filed by both the Tenant and the Landlords pursuant to the Residential Tenancy Act (the “Act”):

The Tenant applied for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act

The Landlord applied for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the Act.

TC attended the hearing for the Tenant.

Landlords MB and BM attended the hearing for the Landlords with FE attending as their agent/witness.

Preliminary Matters

Amendment of Tenant's application

MB and BM confirmed that they are the Landlords and FE acts as their property manager. Accordingly, based on section 64(3)(a) of the Act, I have amended the Tenant's application to remove FE and include MB and BM as the Landlords.

Unrelated claims

The following issues are dismissed with leave to reapply:

- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

10-Day Notice

During the hearing, the parties discussed the matter of a 10-Day Notice issued to the Tenant in April for unpaid rent. However, while the 10-Day Notice and the matter of unpaid rent was discussed at the hearing, I have made no findings regarding the validity of the 10-Day Notice or outstanding rent as neither party made an application regarding these matters, and therefore, they are not properly before me.

Issues to be Decided

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

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 parties confirmed that this tenancy began on August 1, 2013. Monthly rent of \$1,836.00 is due on the first day of the month. The Landlord collected a security deposit in the amount of \$800.00 which they continue to hold in trust.

The Tenant acknowledged receipt of the One Month Notice which was delivered to them in person on April 23, 2024. The Landlords submitted a copy of the One Month Notice into evidence. The One Month Notice is dated April 23, 2024, listing an effective move out date of May 23, 2024. The One Month Notice indicates that it was issued because the Tenant is repeatedly late paying rent.

The Landlord proceeded first in the hearing. MB testified that since November 2023, the Tenant has repeatedly paid rent late. The Landlord testified that they issued 10-Day Notices to the Tenant in November 2023 and April 2024. MB testified that they Tenant has not paid rent for the months of April, May and June 2024.

FE testified that they manage the property for the Landlord. FE confirmed that the Landlord issued 10-Day Notices for unpaid rent to the Tenant in November and April. However, FE testified that the Tenant also failed to pay rent on time in December, January, and March. FE testified that they worked with the Tenant during these months to ensure that rent was paid, albeit late.

The Tenant confirmed that they have been issued two 10-Day Notices for unpaid rent and have not paid rent for personal reasons since March 2024. The Tenant disputed that rent was late in January 2024, noting that they paid rent on January 2, 2024, because of the statutory holiday on January 1, 2024.

Analysis

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

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, the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

The Tenant confirmed receipt of the One Month Notice on April 23, 2024, and applied to dispute the One Month Notice on May 3, 2024. Therefore, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act.

For the reasons stated below, I find the Landlord has met the burden which is upon them to prove that they have sufficient grounds to issue the One Month Notice and end this tenancy.

Residential Tenancy Policy Guideline 38 - Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice to end tenancy. The Policy Guideline further states 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.

Based on the documentary evidence of the Landlords and the affirmed testimony of MB and RE, I find that the Landlords have established that the Tenant paid rent late at least three times between November 2023 and April 2024.

As a result, the Tenant's application for cancellation of the Landlord's One Month Notice under section 47 of the Act is dismissed, without leave to reapply.

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 director dismissed the tenant's application or upholds the landlord's notice, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

The One-Month Notice lists an effective move out date of May 23, 2024. However, based on section 53(2) of the Act, I correct the effective date of the Notice to May 30, 2024. Having made this correction, I find that the One Month Notice complies with section 52 of the Act.

Based on the foregoing, I find that the Landlord is entitled to an Order of Possession which will be effective seven (7) days after service on the Tenant.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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.

The Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act 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: June 25, 2024

Residential Tenancy Branch