

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenants under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on January 13, 2025, is 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 Tenants under section 72 of the Act

The Tenants' Application for Dispute Resolution, filed on January 31, 2025, is for:

- An order to cancel 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 Landlord under section 72 of the Act

Landlord C.M., Witness C.S. attended the hearing for the Landlord

No one attended the hearing for the Tenants

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Tenants are deemed served with the Proceeding Package, in accordance with section 90 of the Act, on February 19, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

The Landlord acknowledged service of the Tenants' evidence and I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

I find that the Tenants are deemed served with the Landlord's evidence , in accordance with sections 88 and 90 of the Act, on February 19, 2025, the fifth day after the registered mailing. The Landlord testified that they served the evidence together with the Proceeding Package.

Preliminary Matters

This hearing was scheduled to commence at 11:00 A.M. The Landlord, their witness, and I were in the teleconference for a total of 31 minutes, until 11:31 A.M. The Tenants did not attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, their witness, and I were the only persons who had called into this teleconference.

Rule of Procedure 7.3 allows a hearing to continue in the absence of a party. Accordingly, I conducted the hearing in the absence of the Tenants.

Issues to be Decided

Are the Tenants 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 either party entitled to recover the filing fee from the other part?

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 December 1, 2018, with a current monthly rent of \$1,242.00, due on first day of the month, with a security deposit in the amount of \$600.00. The rental unit is a basement suite in a house.

The Landlord testified that the Tenants were repeatedly late paying rent, so the Landlord issued a One Month Notice to End Tenancy for Cause to the Tenant on January 9, 2025. It stated that the Tenants must move out of the rental unit by February 28, 2025 (the "One Month Notice"). The Landlord provided a copy of the One Month Notice that was served to the Tenants by registered mail on January 13, 2025.

The Landlord testified that, as stated in the 'details of cause' section of the One Month Notice, the Tenants were late paying rent in February, March, May, June, November, and December 2024. The Landlord provided copies of Interac e-transfer notices showing the dates which the Landlord received rent payments from the Tenants. The

Landlord also provided their bank statements showing when the Tenants' rent payments were deposited.

The Landlord testified that the Tenants told them that they would move out on March 3, 2025, but the Tenants have been inconsistent in the past. The Landlord requested an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Are the Tenants entitled to more time to cancel the Landlord's One Month Notice?

The Tenants have the burden to prove that they are entitled to more time to cancel the One Month Notice. The Tenants did not attend the hearing, and their application discloses no circumstances which entitles them to an extension of time to dispute the One Month Notice.

The Tenant's application for more time to cancel the Landlord's One Month Notice is dismissed without leave to reapply.

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

I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice. The Landlord provided proof that the One Month Notice was sent to the Tenants on January 13, 2025 by registered mail. It is deemed served to the Tenants on January 18, 2025 under section 90 of the Act. I find that the One Month Notice complies with section 52 of the Act.

Based on the e-transfer notification provided by the Landlord as evidence, I find that Tenants were late paying their rent in May, June, November, and December, 2024.

Residential Tenancy Branch Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. As I have found that the Tenant was late paying rent at least four times in the last year, I find that the Landlord had cause to end this tenancy.

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.

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.

The Landlord's application for an Order of Possession based on the One Month Notice to End Tenancy under section 47 of the Act, is granted under section 55 of the Act.

Is either party entitled to recover the filing fee for their application from the other party?

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. The Tenants are not entitled to the filing fee for their application as they were not successful.

Section 72(2)(b) of the Act states that if there is an amount owing from a tenant to a landlord, an arbitrator may deduct that amount from a security or pet deposit due to the tenant.

In accordance with the offsetting provisions of section 72 of the Act, the Landlord may retain \$100.00 from the Tenants' security deposit in satisfaction of the monetary order for the filing fee.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days, after service of this Order on the Tenants**. Should the Tenants 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 Tenants' application to cancel the One Month Notice to End Tenancy, and for an extension of time to dispute, 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: March 24, 2025

Residential Tenancy Branch