



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that she received the 1 Month Notice handed to her on November 24, 2017, I find that she was duly served with this Notice in accordance with section 88 of the *Act*. Although the tenant's service of her dispute resolution hearing package by email on December 15, 2017 does not comply with the requirements of section 89 of the *Act*, the landlord confirmed that the tenant's dispute resolution hearing package was received by the landlord. Consequently, I find that the landlord was duly served with this hearing package in accordance with section 89 of the *Act*. As the tenant confirmed that she had received the landlord's written evidence, I find that she was duly served with this material in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord entered into written evidence a copy of the written Residential Tenancy Agreement for this one year fixed term tenancy signed by the parties on July 12, 2017. Although the tenancy was to officially commence on August 1, 2017, the landlord gave undisputed sworn

testimony supported by written evidence that the tenant moved in shortly before that date. Monthly rent is set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit paid on July 12, 2017.

The landlord's 1 Month Notice cited the following two reasons for seeking an end to this tenancy for cause.

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

With respect to the first of these reasons, the landlord provided undisputed sworn testimony supported by written evidence that the tenant was late in paying the rent on three successive occasions. Landlord JM testified that the tenant paid the September 2017 rent on September 8, the October 2017 rent on October 5, and the November 2017 rent on November 14. In addition to the standard rent, the tenant was required to pay late fees imposed by the landlord in accordance with the provisions of their tenancy agreement on each of these occasions. Although the tenant paid the December 2017 rent on time, the tenant confirmed that they have not yet paid the January 2018 rent.

The tenant testified that they had chosen to not pay the January 2018 as a result of a number of concerns about the condition of the rental unit and the landlord's failure to undertake corrective repairs. The tenant said that there was a leak in the rental unit and that mould was growing there. When questioned about this, the tenant confirmed that they had not received any order from an arbitrator appointed under the *Act* that would allow them to withhold paying rent until these problems had been rectified.

The landlord also entered into written evidence a series of 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) that were issued for each of September, October, and November 2017, as well as January 2018.

The tenant explained that there had been three deaths in the tenant's family in September and October 2017, requiring the tenant to be away from the residence frequently. The tenant testified that their brother was murdered on October 29, 2017, and the tenant's mother passed away shortly thereafter. The tenant testified that they called one of the landlord's reception staff to explain that they would be late paying the November 2017 rent and was told that this would be alright. Although the tenant said that they had a record of having placed this call, the tenant did not enter this information into evidence for this hearing. The tenant did not have anything in writing from the landlord agreeing that they could delay paying the November 2017 rent.

The tenant testified that the only mechanism for paying the rent to the landlord relied on the tenant's personal attendance in the community to hand the rent to a landlord representative.

The tenant said that the landlord had not established any way of obtaining the rent through a direct deposit mechanism.

Landlord CB gave undisputed sworn testimony that the landlord has a long established practice of accepting post-dated cheques and also would accept direct deposit payments. The landlord's representatives noted that in this short term tenancy, the tenant has already been late paying the rent on four out of six occasions. They requested an Order of Possession due to the tenant's history of late rent payments.

Analysis

Landlord JM noted that the tenant's application to cancel the 1 Month Notice was submitted after the ten day time frame for applying to cancel that Notice had expired. The tenant confirmed that she was a day late in submitting her application.

Section 47 of the *Act* provides 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. I find that the tenant has failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, the tenant may very well have been conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2017.

Given the exceptional set of circumstances that the tenant experienced over a short period of time in her family, I have also considered the following wording of paragraphs 47(1)(b) and (d)(i) of the *Act* to ensure that the landlord had sufficient grounds to end this tenancy for cause.

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(b) the tenant is repeatedly late paying rent;...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

The landlord needs only demonstrate that one of the reasons identified in the 1 Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on three successive occasions from September through November 2017.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

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...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions and has still not paid her January 2018 rent, fifteen days after it was due. Although I recognize the tenant has undergone a trying set of circumstances with the number of people who have passed away in her family recently, section 26(1) of the *Act* requires rent to be paid when it is due. I do not accept the tenant's claim that they could only pay the rent in person to this commercial landlord, who testified that post-dated cheques and direct deposit payments would not have required the tenant to be in the community when rent was due on these occasions.

For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent. As section 47 of the *Act* only requires that one of the reasons cited in a 1 Month Notice are valid, I have not considered the landlord's secondary reason for seeking an end to this tenancy.

Section 55 of the *Act* reads in part as follows:

55 (1) *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*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of

that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 15, 2018

Residential Tenancy Branch