



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 561056 BC Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes CNC, CNE, MT, MNDC, OLC, LRE, AAT, LAT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order cancelling the One Month Notice to End Tenancy for end of employment issued by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- authorization to change the locks to the rental unit.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the One Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the One Month Notice. I will make a determination on the balance of the tenant's application at the conclusion of this Decision.

I did inform the parties at the beginning of the hearing that the focus and primary issue of the hearing was consideration of the landlord's Notice; however, the tenant said he did not understand why the remaining issues would not also be considered at this hearing.

I explained several times to the tenant the reasons why that was the case, as they were not sufficiently related to the most urgent matter; however, the tenant said he has a disability, a head injury, and did not seem not to understand. I note that the tenant did not obtain the services of an advocate or representative to attend the hearing for assistance.

I kept the tenant's condition in mind throughout the hearing.

Further, although the tenant asked for more time to dispute a One Month Notice to End Tenancy for end of employment, I was not provided with a copy of such Notice and there was no evidence to suggest he had received this particular Notice. Further, the evidence showed that the tenant filed his application in dispute of the One Month Notice to End Tenancy for Cause within the required time allowed. It was therefore not necessary to consider his request for an extension of time or his request to cancel the One Month Notice to End Tenancy for end of employment.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice to end the tenancy?

Background and Evidence

This written tenancy agreement shows that this tenancy began on November 11, 2017, monthly rent is \$1,500.00, due on the first day of each month, and the tenant did not pay a security deposit.

The landlord testified in support of serving the tenant the Notice, issued pursuant to section 47(1)(b) of the Act. The Notice submitted into evidence by both parties shows that it was dated March 5, 2020, listing an effective end of tenancy date of April 11, 2020. The landlord submitted without dispute that the Notice was delivered to the tenant by registered mail on March 6, 2020.

The cause listed on the Notice alleged the tenant is repeatedly late paying rent.

The landlord testified and provided documentary evidence that the tenant has only paid his rent on time for eight of the 30 months of this tenancy.

The landlord submitted on the Notice and in the hearing, that the tenant was late in his rent payments in December, 2019, and January and February 2020, which caused the Notice to be issued to the tenant.

The landlord also submitted that in the year 2019, the tenant's rent payments were late 8 of the 12 months.

The landlord stated that the tenant also often sent in partial payments throughout the months and that he has not paid rent at all in April and May 2020.

The landlord submitted an accounting of the tenant's rent payments from the beginning of the tenancy, which documented the landlord's submissions.

In response to my inquiry, the landlord said that the tenant paid his monthly rent by electronic transfers.

Tenant's relevant response-

The tenant said he is self-employed and that the first manager with this tenancy worked with him, until she left. The tenant said that the first manager understood his disability and inconsistent income from being self-employed. The tenant said that the first manager also understood that there were issues such as internet outages, transportation problems, and banking problems, which sometimes prevented him from paying the rent on time.

The tenant then proceeded to provide testimony about the other issues listed in his application, such as the alleged condition of the rental unit, rodent issues, and health and safety matters.

The landlord responded, denying that the first manager had no problems with the late payments.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

A One Month notice to End the Tenancy for Cause is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date here of April 11, 2020, is changed to April 30, 2020.

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89 of the Act.

Section 47(1)(b) of the Act authorizes a landlord to end a tenancy if the tenant is repeatedly late in paying rent.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

After considering the undisputed oral and written evidence submitted for this hearing, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

The undisputed evidence shows that the tenant paid his monthly rent for December 2019 in two installments, \$1,000 on December 2, 2019 and \$500 on December 9, 2019. The monthly rent for January 2020 was paid on January 2, 2020, and the monthly rent for February 2020 was paid in five installments, beginning on February 3 and ending on February 19, 2020. I note that the full amount for February was not paid.

I also accept the landlord's undisputed testimony and documentary evidence that the tenant's monthly rent payments have only been paid on time for 8 of the 30 months of the tenancy, and only 4 months during 2019.

While the tenant claims the other manager understood his situation, even if that were the case, I do not find that excused the tenant from his legal obligation to pay monthly rent in full by the first day of the month.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant is repeatedly late paying rent.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

As the effective date of the Notice has already passed, I find the landlord is entitled to and I grant an order of possession effective two days after service upon the tenant

pursuant to section 55 of the Act, as the evidence showed the tenant did not pay monthly rent for April or May 2020.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement such as bailiff fees are recoverable from the tenant.

Although I have ordered the tenancy will end pursuant to section 46 and 55 of the Act, I find the order of possession cannot be enforced until such time as the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, Emergency Program Act, Ministerial Order No. M089, (Ministerial Order) expires or is cancelled.

I advise the tenant of the following taken from the Residential Tenancy Branch (RTB) website:

Tenants should pay rent wherever possible. The legislation still requires that tenants pay rent in full and on time.

- **The state of emergency temporarily suspends a landlord's ability to end a tenancy if a tenant does not pay the rent in full and on time.**
- **A tenant who has not paid rent could face eviction once the state of emergency is over.**

Remaining issues –

As I have granted the landlord an order of possession of the rental unit, signifying the end of the tenancy, I dismiss the portion of the tenant's application seeking an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit, an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, an order requiring the landlord to allow access to the rental unit for the tenant and his guests, and authorization to change the locks to the rental unit, **without leave to reapply** as these are matters relating to an ongoing tenancy.

I dismiss the tenant's claim for compensation for a monetary loss or other money owed, with leave to reapply.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

The portion of the tenant's application for compensation for a monetary loss or other money owed is dismissed with leave to reapply.

The remaining issues in the tenant's application are 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 *Residential Tenancy Act*.

Dated: May 12, 2020

Residential Tenancy Branch