



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

On October 1, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenant attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary and Procedural Matters

The Landlord provided affirmed testimony that he served a copy of his documentary evidence to the Tenant prior to the hearing.

When the Tenant was asked whether he received the documentary evidence from the Landlord, the Tenant provided affirmed testimony that he had not received any documents.

The Landlord was asked to provide testimony on when and how the documentary evidence was served to the Tenant. The Landlord testified that his evidence was served using Canada Post Registered Mail sent to the Tenant at the dispute address on October 4, 2020. The Landlord testified that he has provided a copy of the registered mail receipt and tracking information. The Landlord provided a copy of the registered mail receipt dated October 4, 2020 which is addressed to the Tenant at the dispute

address. The Canada Post website indicates that the registered mail was received by the Tenant on October 14, 2020.

The Landlord has provided the better evidence that the Tenant was served with his evidence. I find that the Tenant is deemed to be served with the Landlord's documentary evidence in accordance with the service provisions in sections 89 and 90 of the Act.

The Landlord testified that he received a copy of the Tenant's documentary evidence. The evidence from the Landlord and Tenant is accepted and was considered.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the tenancy ending and is the Landlord entitled to an order of possession based on issuance of a One Month Notice to End Tenancy for Cause that was not disputed?

Background and Evidence

The Landlord testified that the tenancy began on April 1, 2016 and is currently on a month to month basis. The Tenant testified that the tenancy began in April 2016 and suggested that the tenancy is on a fixed term basis. The parties agreed that rent in the amount of \$2,197.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$1,098.50 to the Landlord. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that he issued the Tenant a One Month Notice to End Tenancy for Cause dated September 16, 2020 ("the One Month Notice") in person to the Tenant on September 17, 2020. The Landlord provided a copy of the One Month Notice. The reason cited by the Landlord within the One Month Notice is as follows:

Tenant is repeatedly late paying rent

The Landlord submitted that the Tenant paid the rent late for the months of January, February, March, September and October of 2020. The Landlord provided the following rent ledger:

2101-1211 Melville Vancouver

Record of rent payments for year 2020 as of Dec. 5 2020

<u>Month</u>	<u>Due Date</u>	<u>Date-Rent Paid</u>	<u>Amount Due</u>	<u>Paid amount</u>	<u>Outstanding payment</u>
Jan-20	1/01/20	1/08/20	\$2,197.00	\$2,197.00	\$0.00
Feb-20	2/01/20	2/07/20	\$2,197.00	\$2,197.00	\$0.00
Mar-20	3/01/20	3/06/20	\$2,197.00	\$2,197.00	\$0.00
Apr-20	4/01/20	4/28/20	\$2,197.00	\$2,197.00	\$0.00
May-20	5/01/20		\$2,197.00	\$0.00	\$2,197.00
Jun-20	6/01/20	6/12/20	\$2,197.00	\$2,195.00	\$2.00
Jul-20	7/01/20	7/23/20	\$2,197.00	\$1,695.00	\$502.00
Aug-20	8/01/20		\$2,197.00	\$0.00	\$2,197.00
Sep-20	9/01/20	9/16/20	\$2,197.00	\$1,000.00	\$1,197.00
Oct-20	10/01/20	10/07/20	\$2,197.00	\$1,695.00	\$502.00
Nov-20	11/01/20		\$2,197.00	\$0.00	\$2,197.00
Dec-20	12/01/20		\$2,197.00	\$0.00	\$2,197.00

The Landlord submitted that the Residential Tenancy Branch policy guideline provides that three late rent payments are sufficient for the Landlord to issue a notice to end tenancy.

The One Month Notice provides that the Tenant must move out of the rental unit by October 31, 2020.

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "This is a legal notice that could lead to you being evicted from your home". The Notice informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept that the tenancy is ending.

The Tenant testified that he never received the One Month Notice.

The Landlord was asked to provide testimony on when and how the One Month Notice was served to the Tenant. The Landlord testified that on September 17, 2020 at 12:43 pm, he attended the Tenant's place of business and served the One Month Notice to him in person. The Landlord testified that he served all three pages of the One Month Notice to the Tenant. The Landlord provided a photograph of the Tenants place of business that he took after he served the Tenant.

When asked for a response, the Tenant then replied that he did receive a document from the Landlord while at his place of business. The Tenant testified that the document was a tenancy branch form, but it was not a notice to end tenancy. The Tenant stated the form was not handed to him but was left on a table in his office.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice to End Tenancy for Cause dated September 16, 2020.

The Tenant provided testimony acknowledging that the rent was paid late for the months as indicated by the Landlord. The Tenant testified that the reason the rent was paid late is because the Landlord unilaterally changed the payment terms which caused the Tenant to be late with rent.

The Tenant testified that the Landlord does not want to accept rent payment using interact, so the Tenant has to deposit cash into the bank account provided by the Landlord. The Tenant testified that it takes him 3 -5 days to pay his rent because he has to cash his own company cheque made out to himself and that because the amount is over \$5,000.00 it takes 5 days to cash/ clear before he can get the money. He testified that his accountant provides him his company cheque/ salary at the end of every month.

In reply, the Landlord testified that the original tenancy agreement required the rent to be paid by cheque. The Landlord testified that approximately two years ago it was the Tenant who approached him and stated that he did not want to pay rent using cheques and asked to be able to deposit cash into the Landlord's account. The Landlord testified that in April 2020 the Tenant then asked if he could pay the rent using electronic transfers via email notifications.

The Landlord testified that the later rent payments for September and October were paid late using interact deposits not cash deposits made into the Landlords bank. The Landlord testified that the Tenant owns two clothing outlets and signs his own business cheques.

The Landlord testified that the Tenant pushed them to allow cash payments and they agreed; then the Tenant pushed them to allow interact and they again agreed. The Landlord testified that the Tenants rent payments are repeatedly late.

In reply, the Tenant was asked to answer on whether he owned the business and whether he signed his own cheques. After having to be asked on a couple of occasions

he replied that he is not the owner and does not sign his own cheques. He stated that he did ask the Landlord to allow interact for payment of the rent.

Analysis

With respect to the issue cited in the One Month Notice regarding late payment of rent, section 47 of the Act provides that a Landlord may end a tenancy by giving a notice to end the tenancy if the Tenant is repeatedly late paying rent.

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

Due to the Covid 19 pandemic the British Columbia Provincial Government issued an order that landlords could not evict tenants for unpaid rent and/or utilities relating to affected rent. Affected rent is rent due under a tenancy agreement from March 18, 2020 to August 17, 2020. Landlords are permitted to issue a notice to end tenancy based on late payments of rent that is not considered to be “affected rent”.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

During the hearing, I found the Tenant’s responses to my questions to be evasive. The Tenant’s responses about owning the business and whether he signed his own cheques was evasive. The Tenant would not respond directly and would quickly try to talk around the issues.

I have also considered the Tenant’s statements on why the rent was repeatedly paid late. The Tenant is responsible to pay the rent when it is due under the tenancy agreement. It is not reasonable that the Landlord should have to wait for 5 days for the Tenant’s cheque to clear the bank. In addition, with respect to the late payments of rent using interact, the Tenant’s argument makes no sense. If the Tenants paycheques are given to him at the end of the month and need 5 days to clear, the Tenant still would not be able to pay the rent that is due on the first day of each month on time using interact.

With respect to service of the One Month Notice to End Tenancy for Cause, the Landlord’s testimony was direct and clear. The Landlord even recorded the exact time that he served the One Month Notice. The Tenant said he did not receive the One Month Notice. The Tenant acknowledged that the Landlord did attend his place of business on September 17, 2020 and gave him a document. The Tenant did not

provide any explanation on what document he received or why the Landlord would attend his workplace to serve him a tenancy document.

I have considered whether it is more likely than not that the Tenant was served with the One Month Notice. Based on the Tenant's evasive testimony in the hearing I find that the Tenant's testimony lacked credibility. I find that it is not reasonable to accept that the Landlord would travel to the Tenant's place of business on September 17, 2020 and serve a random tenancy document to the Tenant. I find that the Landlord has provided the stronger evidence and I find that the Tenant received the One Month Notice to End Tenancy for Cause dated September 20, 2020.

The One Month Notice provided the Tenant with his rights of dispute. If the Tenant believed that the Landlord did not have sufficient proof to support the reasons for ending the tenancy, the Tenant was required to dispute the Notice within 10 Days. The Tenants opportunity to dispute the Notice has expired.

I find that the Tenant did not apply to dispute the One Month Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession for the rental unit pursuant to section 55 of the Act, effective at 1:00 pm on December 31, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the Tenant's security deposit in full satisfaction of the filing fee.

Conclusion

The Tenant received the One Month Notice did not file to dispute the Notice. The Tenant is presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on December 31, 2020, after service on the Tenant.

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: December 11, 2020

Residential Tenancy Branch