



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenants: CNC, MT
For the landlord: OPC, MNDC-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenants and the landlord's agents (landlord) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Both parties confirmed receipt of the other's evidence prior to the hearing. All parties were informed prior to the start of the hearing that recording of the Residential Tenancy

Branch (RTB) was prohibited. In addition, all parties confirmed they were not recording the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB 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 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the landlord also applied for monetary compensation for loss or revenue, insurance, and late fees. I find that the landlord's monetary claim is not sufficiently related to the primary issue listed in both applications, and that is whether the 1 Month Notice for cause is valid and enforceable.

I dismiss the landlord's monetary claim, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Are the tenants entitled to an order extending the time to file an application disputing the Notice issued by the landlord?

Are the tenants entitled to an order cancelling the Notice?

Are the landlord entitled to an order of possession of the rental unit based on the Notice and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 1, 2019, monthly rent began at \$1,150, current monthly rent is \$1,167.25, according to the landlord's application, and the tenants paid a security deposit of \$575 and a pet damage deposit of \$200. Filed in evidence was a copy of the written tenancy agreement.

Filed in evidence was the Notice. The Notice was dated December 15, 2021, for an effective date of January 31, 2022, and was served to the tenant AE on December 15, 2021, in the rental office, according to the landlord, JC.

The tenant, ZE, said she would represent the tenants, and stated her mother did receive the Notice, but did not understand what it meant. ZE, the daughter of the other two tenants, said in their application she received the Notice on January 1, 2022.

The tenants' application was filed on January 23, 2022, which was beyond the time limit of 10 days in which to file an application to dispute the Notice.

The reasons stated on the Notice to end the tenancy were:

- the tenant is repeatedly late paying rent; and
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On the Notice and at the hearing, the landlord submitted that the tenants paid the monthly rent late for each of the months of November 2020 through December 2021 (13 months), the month the Notice was served to the tenants.

The landlord said they gave the tenants two breach letters and were given verbal reminders that they needed to pay the rent on time.

The landlord JC said that she spoke to the tenants in their native language, and they had no misunderstanding of what the Notice meant to their tenancy.

In response, the tenant said that the landlords were okay with the tenants paying the monthly rent late. In their application, the tenants submitted that there was a misunderstanding between the landlords and the tenants. The tenants wrote that their household became a single-income household, due to the health issues experienced by one of the tenants. Also, the main income earner had issues with their employer paying them sporadically.

I note that ZE is no longer a tenant living in the rental unit, and was representing her parents as an advocate/agent.

Analysis

Landlord's application-

Section 47(1)(b) of the Act authorizes landlords to seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

I find the landlord submitted sufficient evidence that the tenants were served a 1 Month Notice to End Tenancy for Cause and did not apply to dispute the Notice within ten days of service. I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

Despite the tenants being conclusively presumed to have accepted the end of the tenancy, the tenants filed for more time to dispute the Notice.

I do not find the tenants submitted sufficient evidence that exceptional circumstances prevented them from filing their application on time. Tenancy Policy Guideline 36 states that one example of what is not an exceptional circumstance is that a party did not know the applicable law or procedure.

I therefore dismiss the tenants' request for more time.

Despite this, I additionally find that the landlord has provided sufficient evidence to support their Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions.

I find the landlord established, through oral and documentary evidence, that the tenants made 13 consecutive late payments, including the 12 months prior to the Notice being issued and the month the Notice was issued. The latest late payment resulted in the landlord's Notice being issued to the tenants.

I find the tenants submitted insufficient evidence that the tenants had the landlord's permission to make repeated late payments. The landlord's evidence was clear and consistent that the tenants were warned they were to make their monthly rent payments on time. Apart from that, section 26 of the Act requires tenants to pay the full amount of monthly rent on the day it is due under the tenancy agreement.

I therefore find the landlord submitted sufficient evidence to establish that the tenants were repeatedly late in paying rent when the Notice was issued to the tenants.

For these reasons, I **grant** the landlord's application. I also did not find it necessary to consider the other listed cause, as I found the landlord provided sufficient evidence to support the first cause.

I have reviewed the Notice and find it complies with section 52 of the Act as to form and content.

As I have found that the landlord submitted sufficient evidence to support their 1 Month Notice, I therefore find that the landlord is entitled to, and I grant, an order of possession for the rental unit, pursuant to section 55 of the Act. As the tenants have paid the monthly rent for April 2022, I make the order of possession effective at **1:00 pm on April 30, 2022.**

Should the tenants fail to vacate the rental unit pursuant to the terms of the order of possession after it is served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. **The tenants are cautioned that costs of such enforcement, such as bailiff fees, may be recoverable from the tenants.**

I allow the landlord recovery of their filing fee of \$100, and as the landlord has claimed against the tenants' security deposit, I direct them to withhold the amount of \$100 from the tenants' security deposit in satisfaction of the monetary award.

Tenants' application-

As I have granted the landlord's application and granted them an order of possession for the rental unit based upon the 1 Month Notice, I **dismiss** the tenants' application seeking cancellation of the Notice, without leave to reapply.

Conclusion

The landlord has been granted an order of possession for the rental unit, effective at 1:00 pm on April 30, 2022, and recovery of their filing fee.

The tenants' application is dismissed without leave to reapply as the landlord's application was successful.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 13, 2022

Residential Tenancy Branch