



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, OLC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act; and,
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlords, MD and LD, and the Tenant, GS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords served the Tenant with the 10 Day Notice on March 1, 2022, by posting the notice on the Tenant's door. The Landlords testified that the 10 Day Notice is now moot, and they requested to withdraw the 10 Day Notice. I cancel the Landlords' 10 Day Notice.

The Landlords served the Tenant with the One Month Notice on March 8, 2022, by posting the notice on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to service of this notice. The Tenant applied to dispute this notice on March 16, 2022. I find the One Month Notice was deemed served on the Tenant on March 11, 2022, according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package on March 25, 2022, by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlords confirmed receipt of the NoDRP package on March 29, 2022. I find that the Landlords were served with the NoDRP package on March 29, 2022, in accordance with Section 89(1)(c) of the Act.

The Landlords served the Tenant with the first bundle of evidence on April 5, 2022, by posting the first evidence package on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to service of the first evidence package on April 5, 2022. I find that the Landlords' first evidence package was deemed served on the Tenant on April 8, 2022, according to Sections 88(g) and 90(c) of the Act.

The Landlords served the Tenant with the second bundle of evidence on April 14, 2022, by posting the second evidence package on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to service of the second evidence package on April 14, 2022. I find that the Landlords' second evidence package was deemed served on the Tenant on April 17, 2022, according to Sections 88(g) and 90(c) of the Act.

Preliminary Matter

Amending Party Name

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named the Landlord, by a business name. The Landlords advised that in this matter, the Landlords' names must be what is reflected in the tenancy agreement. In the hearing, both Landlords provided their full names, and agreed that their names can be

amended in the matter. All parties agreed, and the correct names for the Landlords are noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlords are properly named as their individual names rather than the business name. This also corresponds to the names listed in the tenancy agreement. I amended the Landlords' names, and this is reflected in this Decision.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlords' One Month Notice?
2. If the Tenant is unsuccessful, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlords to comply with the Act, regulations, and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this tenancy began as a fixed term tenancy in May 2019. A subsequent fixed term tenancy ended on March 31, 2022. The Tenant signed another fixed term tenancy agreement. Monthly rent is \$751.03 payable on the first day of each month. A security deposit of \$367.50 and a pet damage deposit of \$367.50 were collected at the start of the tenancy and are still held by the Landlords.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. The effective date of the One Month Notice was April 30, 2022. Additional details noted on the One Month Notice state:

The Tenant has been late paying rent 3 times in the last 9 months, the latest being January & March 2022. Rent has been late on other occasions as well.

The Landlords testified that the Tenant has been late five times paying rent. Four of those times are in the last thirteen months. The Landlords warned the Tenant on the

second to last time, that if she is late paying her rent, it would affect her tenancy. The Landlords follow up with this Tenant often and feel if they did not, she would be late more than what she has been in the past. At present, there is no outstanding rent owing.

The Tenant said on occasions where rent was not paid in a timely matter was when the rent came out of a different bank account. The Tenant testified that at no time did she have authorization to be late with her rent; although, the Tenant stated, in text messages she was authorized to make late rent payments and she was to include a \$25.00 late fee.

Other times the Tenant was late was over the Christmas season when her finances were tight. Again, she stated that she never let it bounce, instead she asked permission for the Landlords to hold off on depositing her cheques.

The Landlords are seeking an Order of Possession for the repeated late rent payments. The Tenant is seeking to cancel the Landlord's One Month Notice.

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.

For the Tenant's benefit, Section 26(1) of the Act specifies the rules about payment of rent. It states, 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.

Section 47 of the Act outlines how a tenancy can end 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;

...

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

...

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. It states:

...

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

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant was deemed served with the One Month Notice on March 11, 2022. I find the Landlords' One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied, via an Amendment to dispute the One Month

Notice, on March 16, 2022. I find the Landlords received this Amendment as some of its contents were uploaded in one of the Landlords' evidence packages.

The Tenant has been late paying rent five times. Four of those times were in the last thirteen months. The Landlord has served at least four 10 Day Notices for Unpaid Rent on the Tenant in this time period. I find the Landlords have not waived reliance on Policy Guideline #38. The tenancy agreement imposes a \$25.00 late fee when rent is not paid on time; however, this is not authorization for the Tenant to pay rent late. The Tenant said, at least, on two occasions there were bank account mix ups, and the Tenant was late paying her rent. The Act is clear, rent must be paid when it is due under the tenancy agreement. I find, even if I excuse the two occasions where the Tenant mixed up what account her rent was to come out of, there have been three other occasions when rent was late. Based on a balance of probabilities, I find this is sufficient, according to Policy Guideline #38, that the Tenant has been repeatedly late paying rent and the Landlords' have proven cause to end this tenancy. Accordingly, I dismiss the Tenant's application for dispute resolution to cancel the Landlords' One Month Notice without leave to re-apply.

As the Tenant's application is unsuccessful, I must consider if the Landlords are entitled to an Order of Possession. Section 55 of the Act states:

Order of possession for the landlord

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 previously found that the One Month Notice complies with Section 52 of the Act, and I uphold the Landlords' notice. Pursuant to Section 55(1) of the Act, I grant an Order of Possession to the Landlords which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlords are granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Landlords must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

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: May 12, 2022

Residential Tenancy Branch