



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- Cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act

Landlord AS and tenant KT appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice to End Tenancy dated November 2, 2022 with an effective date of November 30, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act

Pursuant to section 53 of the Act, the corrected effective date of the One Month Notice is December 31, 2022.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The tenants applied for an order suspending or setting conditions on the landlord's right to enter the rental unit in addition to cancellation of the One Month Notice. This issue is not related to the dispute of the One Month Notice and is therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced Jan 1, 2021 on a month to month basis. Rent was \$2,050.00 per month due on the first of the month. The landlord still holds a security deposit of \$1,025.00 in trust for the tenants. The tenants still occupy the residence.

The landlord testified that he detailed the late rent payments in the One Month Notice, which was provided in evidence. He alleged that the tenant was late on rent in January, March, May, July, October, and November 2022. The tenant also paid rent late in January 2023 after being served the One Month Notice.

The tenant KT admitted in his evidence that he was late paying rent in the months described by the landlord. The late rent payments were due to unexpected bills, and because the tenant KT was laid off in July 2022. He stated that he had spoken to the landlord and the landlord consented to the tenants paying rent late.

The landlord denies consenting to late rent payments.

Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the

tenants apply to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenants.

RTB Policy Guideline 38 states in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

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.

I find that the landlord has established that the tenants were late paying rent on at least six occasions. The tenants do not dispute this. The landlord denies consenting to late rent payments and the tenants did not produce evidence showing that the landlord consented.

The tenants’ dispute application is dismissed.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenants’ application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective January 31, 2023 at 1:00pm.

Conclusion

The tenants’ application to cancel the One Month Notice is dismissed. The landlord is granted an order of possession which will be effective January 31, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in 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 24, 2023

Residential Tenancy Branch