



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, AAT, PSF, OLC

Introduction and Preliminary Matters

On November 25, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for Compensation pursuant to Section 67 of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On December 1, 2022, this hearing was scheduled to commence via teleconference at 11:00 AM on April 3, 2023.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 20-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

The Landlord advised of her correct legal name and of the correct dispute address. As such, the Style of Cause on the first page of this Decision has been amended to reflect both of these corrections.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:20 AM. Only the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in, and I also confirmed from the teleconference system that the only party who had called into this teleconference was the Landlord.

As the Tenant did not attend the hearing, his Application has been dismissed without leave to reapply.

The Landlord advised that her evidence was served to the Tenant by hand on March 17, 2023. Based on this undisputed testimony, as the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on July 1, 2018, that rent was currently established at \$1320.00 per month, and that it was due on the first day of each month. A security deposit of \$337.50 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

She testified that the Notice was served to the Tenant by hand on November 15, 2022, and the Tenant clearly received this as it was indicated inasmuch on the Application. The Landlord served the Notice for many reasons, but the only one that will be considered here is because the “Tenant is repeatedly late paying rent.” The effective end date of the tenancy was noted as December 15, 2022, but as rent was due on the first day of each month, this effective end date is incorrect. Pursuant to Section 53 of the *Act*, this date will automatically self-correct to December 31, 2022.

Prior to service of the Notice, she advised that the Tenant paid rent on October 3, 2022, August 25, 2022, and July 12, 2022. As a result, the Notice was served. However, there were also many more instances of late payment of rent before and after the dates specified above.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord’s One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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;

In addition, I note that the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy when 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. 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

Section 26(1) of the *Act* establishes that "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."

The undisputed testimony from the Landlord is that the Tenant was required to pay all of the rent by the first day of each month. Furthermore, rent was not paid in full on the first day of each month more than three times prior to service of the Notice. As such, I am satisfied that there were at least three instances of late payment of rent, which precipitated service of the Notice.

As there is no evidence before me permitting the Tenant to pay the rent late, contrary to the solemnly affirmed testimony of the Landlord that rent was due on the first day of each month, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed 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: April 3, 2023

Residential Tenancy Branch