



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, AAT**

Introduction

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

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- an order allowing the tenant or guests to access the rental unit pursuant to section 30

Both parties attended the hearing with the landlord represented by an agent RD, while the tenant MN appeared for herself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

Preliminary Issue

The landlord was incorrectly named. The application is amended based on section 64(3)(c) of the Act to reflect the correct name of the landlord.

Service

The tenant disputed receiving the One Month Notice. The landlord testified that the One Month Notice was posted to the door of the tenant’s rental unit on November 23, 2022 and had an effective date of December 31, 2022. The landlord provided an RTB Form 34 showing proof of service in evidence. Based on section 88 of the Act the tenant is found to be properly served with the One Month Notice.

The landlord disputed receiving the tenant's dispute resolution package. The tenant testified that she served the dispute notice and evidence on the landlord by registered mail on December 16, 2022 and she provided a Canada Post receipt in evidence. However, the landlord stated that the address the package was sent to was not the address for service listed on the One Month Notice. The landlord further stated that the location the tenant used for service does not have office facilities for the landlord. Based on the evidence of the parties, I find that the tenant served the landlord with her dispute resolution package as required by section 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to an order allowing the tenant or guests to access the rental unit?

Background and Evidence

The tenancy commenced August 1, 2022. Rent is \$975.00 per month due on the first of the month. The landlord holds a security deposit of \$487.50 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that she had served three previous 10 Day Notices to End Tenancy for Unpaid Rent to the tenant in September, October, and November 2022. The landlord provided the three notices in evidence.

The tenant did not deny being late paying rent but explained that she had ongoing personal circumstances which prevented her from paying rent on time. The tenant alleged that there was an ongoing abusive relationship between her and her partner and some of the abuse she experienced was financial.

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 tenant applies 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 tenant.

RTB Policy Guideline 38 states:

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.

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.

I find based on the evidence of the 10 Day Notices to End Tenancy that the tenant was late paying rent for three consecutive months. While I sympathise with the tenant’s personal circumstances, I do not find that them to constitute exceptional circumstances as contemplated in the Policy Guidelines or to fully explain all of the late payments. Therefore, I find that the tenant was repeatedly late paying rent as alleged in the One Month Notice. The tenant’s application to cancel the One Month Notice 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 tenant’s application. As section 55(1) of the Act is

satisfied, the landlord is entitled to an order of possession effective April 30, 2023 at 1:00 pm.

As the tenancy has ended, I dismiss the tenant's application to allow access to the rental unit.

Conclusion

The landlord is granted an order of possession which will be effective April 30, 2023 at 1:00 pm. 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: April 28, 2023

Residential Tenancy Branch