



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC & FF

Introduction:

This hearing dealt with the tenant's application to set aside a Notice to End Tenancy due to repeated late payment of rent. Both parties appeared and had the opportunity to be heard and respond to the evidence of the other party.

Although the tenant claims to have submitted evidence with his application there was no evidence on file and on record of receiving evidence from the tenant by the Residential Tenancy Branch. I have determined this matter based on the oral submissions of the parties.

I also provided the parties an opportunity to reach a settlement agreement to resolve their dispute. I received notice from the landlord on December 1, 2008 that no agreement has been reached. I have proceeded to determine this matter on the merits.

Issues to be Determined:

Has the tenant breached the tenancy agreement due to repeated late payment of rent?
Is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence:

This tenancy began on September 1, 2007 for a fixed term lease ending on August 1, 2008 with an option to extend the lease for one more year. The monthly rent is \$2,200.00 and the tenant paid a security deposit of \$1,100.00 on August 1, 2007. The tenant uses the rental unit for as a personal residence and to partially operate his business.

The tenant took the unusual position in September 2008 to stop paying his rent. He states that he did this on the basis that he was in negotiations with one of the landlord's agents to end the tenancy because the landlord was intending to sell the rental unit. The tenant never received a two month Notice to End Tenancy and from the statements of the parties the rental unit was never shown and only listed for a brief period.

The tenant was never in a compromising position during these informal discussions, yet has taken the position that the landlord has somehow breached the tenancy by discussing their intent to sell the rental unit. The tenant has failed to pay any rent for September, October and November 2008 on the date of this hearing.

Even though the landlord stated that he was willing to continue with the tenancy on the grounds that the tenant paid the outstanding rent the tenant did not agree during the hearing. I briefly adjourned the hearing to provide the parties the opportunity to settle this dispute.

The landlord is seeking an Order of Possession on the grounds that the tenant is repeatedly late paying rent. The landlord submitted in the last calendar year the tenant was late paying rent in January and March and then has failed to pay any rent since September 2008.

The tenant submitted that the late payments were due to the landlord trying to cash the cheques before they were due. The tenant submitted that the tenancy agreement states that the rent is not due until the 3rd of the month. However, the landlord questioned why the tenant's cheques are all signed for the 1st of the month.

Analysis:

I deny the tenant's application to set aside the Notice to End Tenancy for cause. I accept that the tenant had two late payments in January and March of 2008 and three months for the months of September, October and November 2008.

In addition to this breach the tenant has taken the position that he can remain in possession of the rental unit without fulfilling his obligation to pay the rent. I do not accept that the tenant had any reasonable grounds to not pay the rent as the landlord was not in breach of the tenancy agreement. However, I also note that even if I had determined that the landlord was in breach of the tenancy agreement section 26 of the *Act* states that the tenant must still pay the rent unless he has an Order from a Dispute Resolution Officer.

I find that the tenant is in serious breach of the tenancy agreement and that the Notice to End Tenancy for cause has merit. I also note that despite the landlord's offer to continue with the tenancy, if the tenant paid the rental arrears and current rent, the tenant did not accept this offer.

I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenant pursuant to section 55 of the *Act*. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion:

The tenant's application is dismissed without leave to re-apply. The landlord has been granted an Order of Possession due to the tenant's breach of the tenancy agreement.

Dated December 03, 2008.

Dispute Resolution Officer