



Dispute Resolution Services

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

Decision

Dispute Codes: OPC, MNR, MT, CNC, OPT, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenant applied for more time to cancel a Notice to End Tenancy for Cause, for an Order of Possession and to recover the filing fee for this proceeding. The Tenant said he received the Notice to End Tenancy for Cause on January 21, 2009. As the Tenant applied on January 30, 2009 to set the Notice aside, I find that he applied within the 10 day time limit required under s. 47 of the Act and as a result, his application for more time to file his application is unnecessary.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?

Background and Evidence

This fixed term tenancy started on August 15, 2008. Rent is \$1,275.00 per month payable on the 1st day of each month. The Landlords claim that the Tenant has been repeatedly late paying rent since the beginning of the tenancy and as a result, they served him with a One Month Notice to End Tenancy for Cause dated January 19, 2008 (with an effective date of February 28, 2009).

The Tenant did not dispute that he was late paying rent as alleged but claimed that he fell behind because he was ill at the beginning of the tenancy and just started a new job. The Tenant said he tried to speak to the Landlord about making arrangements for getting caught up but the Landlord did not care. The Tenant also claimed that his irregular pay periods contributed to his not paying the rent on time.

The Landlord argued that he had tried to work with the Tenant about paying the rent and gave him leeway on a number of occasions but the Tenant did not follow through. The Parties agree that the Tenant has not paid rent for February and March, 2009.

Consequently, the Landlords also sought 2 late payment fees of \$20.00 as provided for in the tenancy agreement.

Analysis

Section 68 of the Act permits the director to amend a notice if satisfied the person receiving the notice knew or should have known the information that was omitted from the notice and in the circumstances it is reasonable to amend the notice. I find that the incorrect year with respect to the date of the Notice to End Tenancy for Cause was an obvious typographical error and also find that the Tenant would have known the stated year was incorrect (given that the tenancy did not start until August 2008). Consequently, I find that it is reasonable to amend the date of the Notice to End Tenancy for Cause to read "January 19, 2009".

RTB Policy Guideline #38 (Repeated Late Payment of Rent) says that three late payments are the minimum number to justify a notice to end tenancy for cause. I find that there were 3 late payments of rent, namely for November and December, 2008 and for January, 2009. In particular, I find that the Tenant's rent cheque dated November 1, 2008 and replacement cheque dated November 10, 2008 were returned for non-sufficient funds. I find that the Landlord permitted the Tenant to pay November rent no later than December 1, 2008 but that the Tenant's payment on December 1, 2008 for November was still short by \$65.00. Similarly, I find that the Tenant's rent cheque dated December 1, 2008 and replacement cheque dated December 10, 2008 were returned for non-sufficient funds. The Tenant's rent cheque dated January 1, 2009 was also returned for non-sufficient funds which resulted in the Landlords issuing a 10 Day Notice to the Tenant on January 7, 2009.

Consequently, I find there are grounds for the Notice to End Tenancy for Cause dated January 19, 2009 and the Tenant's application to cancel it is dismissed. The Landlords requested and I find pursuant to s. 55(1)(b) that they are entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant. I also find that the Landlords are entitled to recover unpaid rent for February, 2009 in the amount of **\$1,275.00**, unpaid (prorated) rent for March 1 – 11, 2009 of **\$452.42**, late payment fees of **\$40.00** for February and March, 2009 and the **\$50.00** filing fee for this proceeding.

Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect on 48 hours after service of it on the Tenant and a monetary order in the amount of **\$1,817.42** have been issued to the Landlords and a copy of them must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.