

DECISION

Dispute Codes CNC, OLC, AAT, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy. The Landlord issued the Notice to End Tenancy to the Tenant alleging he is repeatedly late paying the rent and he has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The Landlord issued the Tenant a one month Notice to End Tenancy on July 23, 2009, with an effective end date for the tenancy of August 31, 2009, for the causes described above.

The Landlord testified that in 2009, the Tenant had paid his rent late in January, February, March, April, May, June and July. She testified that she had to remind him many times over the past year to pay his rent.

The Landlord also alleged that the Tenant has been using abusive language with her and has lost his temper with her on several occasions. She testified about several instances where he used foul language. She testified that on one occasion he through a flip-flop sandal at her.

The Tenant acknowledged the rent had been paid late for the months indicated above. He testified that he and the Landlord had a verbal agreement where he could pay his rent late. He explained he had arranged a bank loan for himself where the payments would be made on the first of the month. He had to use his second paycheque of the month to pay his rent. He acknowledged that she had to remind him several times to pay his rent.

The Tenant denies throwing a flip flop sandal at the Landlord. His evidence was the flip-flop came off his foot and hit her in the back.

Analysis

Based on the foregoing, the affirmed testimony and documentary evidence, and on a balance of probabilities, I find that the Notice to End Tenancy is valid and should not be cancelled. The Tenant's Application for Dispute Resolution is dismissed.

I find the Tenant has been repeatedly late paying the rent. The rent has been paid late more than three times in the past few months.

The fact the Landlord accepted the rent late for these months does not constitute an oral agreement that the Tenant could pay the rent late. The Landlord and the Tenant both testified that the Landlord had to remind the Tenant to pay his rent several times over the past few months. The Landlord would not have been reminding the Tenant to pay his rent if there was an oral agreement he could pay the rent following his second pay cheque each month.

As I have found the Notice to End Tenancy should not be cancelled on this ground, it is unnecessary to make any determinations on the second alleged cause.

Following the dismissal of the Tenant's Application, the Landlord requested that she have possession of the rental unit and have the Tenant move out as soon as possible. Therefore, I grant an order of possession effective two days after service. This order may be enforced in the Supreme Court of British Columbia.

Conclusion

The Tenant's Application is dismissed as the Notice to End Tenancy is valid. The Tenant has repeatedly paid his rent late. The Landlord is granted an order of possession effective two days after service upon the Tenant.

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: September 16, 2009.

Dispute Resolution Officer