



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MT, OPC, OPB, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for more time to apply to cancel a notice to end tenancy and to cancel a One Month Notice to End Tenancy for Cause dated September 24, 2009. The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Are there exceptional circumstances that would warrant granting the Tenants more time to apply to apply to cancel the Notice to End Tenancy?
2. Are the Landlords entitled to end the tenancy?
3. Are there arrears of rent and if so, how much?
4. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 1, 2007. Rent is \$400.00 per month and is due in advance on the 5th day of each month. The Tenants paid a security deposit of \$200.00 at the beginning of the tenancy.

The Landlords served the Tenants in person on September 24, 2009 with a One Month Notice to End Tenancy for Cause. The Notice alleged that the Tenants were repeatedly late paying rent. The Tenants initially applied to cancel that Notice on October 6, 2009 (although their application is dated October 5, 2009). The Tenants did not pick up their hearing packages and as a result, on October 16, 2009, the Tenants' application was considered abandoned. The Tenants re-applied to cancel the Notice on October 23, 2009.

The Tenants claim that one of them was in the hospital on October 8th and 9th, 2009 and therefore could not pick up the hearing packages. The Tenants also claim that the other one of them works full time and only has Monday and Tuesdays off of work.

In support of the One Month Notice, the Landlord provided copies of receipts that she claimed corresponded with the dates the Tenants paid rent. In particular, the Landlord said the Tenants made the following late payments:

- December 7, 2008
- January 8, 2009
- February 11, 2009
- April 7, 2009
- June 10, 2009
- August 14, 2009
- September 15, 2009
- October 8, 2009
- December 2009 unpaid

The Landlord said that she initially approached the Tenants on the 5th of each month to collect the rent. However, in June 2009, due to a dispute with the Tenants over the eviction of their son, she and her husband were advised by the RCMP to let the Tenants drop off the rent instead. The Landlord claimed that she did not give the Tenants permission to pay rent late.

One of the Tenants admitted that in June or July 2009, he approached Landlord's husband about picking up the rent and he advised the Tenant that they would have to drop it off instead. The Tenants said thereafter they dropped off rent to the Landlords. The Tenants claimed that in July and August 2009 they were evacuated due to forest fires in the area and therefore could not pay rent on time. The Tenants also claimed that they could not pay rent on the 5th (which is pay day for one of the Tenants) when it landed on a week end because their bank was only open on week days.

The Tenants argued that they often paid rent a few days late but the Landlords did not do anything about it until recently. The Tenants claimed that real reason the Landlords wanted to evict them was because they allowed their son (who was evicted from the rental property for cause on August 1, 2009) to reside with them.

Analysis

Section 47(4) of the Act says that a Tenant who receives a One Month Notice to End Tenancy for Cause must apply to dispute that Notice no later than 10 days after he or she receives it. If the Tenant does not do so, he or she is conclusively presumed under s. 47(5) of the Act to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit at that time.

I find that the Tenants received the One Month Notice in person on September 24, 2009. Consequently, the Tenants had until October 5, 2009 to dispute the One Month Notice. However, the Tenants did not apply to dispute the Notice until October 6, 2009

and it was deemed abandoned because the Tenants failed to pick up the hearing packages by October 16, 2009. Section 59(3) of the Act says that an Applicant must serve their application for dispute resolution on the other party within 3 days of making it. As a result, the Tenants were required to reapply and did so on October 23, 2009. Consequently, I find that the Tenants did not apply to cancel the Notice (on either occasion) within the time limits required by the Act.

Section 66(1) of the Act says that the director may extend a time limit under the Act but only in **exceptional circumstances**. The Tenants argued that one of them was in the hospital on October 8 and 9, 2009. I find, however, that this is not significant to the Tenants' ability to apply to cancel the Notice as the Tenants had from September 24, 2009 to October 5, 2009 to make their application. The Tenants also argued that one of them had medical issues and the other worked full time. While work obligations are not an acceptable reason, I find in any event that at least one of the Tenants was not working on September 28, 29 and October 5, 2009 and there is no evidence why he could not have applied to dispute the Notice on those days.

Consequently, I find that the Tenants have not shown that there were exceptional circumstances that prevented them from applying to cancel the One Month Notice to End Tenancy dated September 24, 2009 within the time limits required by the Act and **their application is dismissed for this reason.**

Even if the Tenants were granted an extension (and they are not), I find that there is sufficient evidence to uphold the One Month Notice. In particular, RTB Policy Guideline #38 says that "three late payments are the minimum number sufficient to justify a notice under these provisions." I accept the Landlords' evidence that up to and including the month of June 2009 she approached the Tenants on the 5th of each month for rent payments but they paid late in December 2008, January 2009, February 2009, April 2009, June 2009, September 2009 and October 2009. Although the Tenants claimed that they could not pay on the 5th of the month when it landed on a week end (which is still not a valid reason), I find that the 5th day of the month only fell on a weekend for the months of April, July and September, 2009. Consequently, I find that there is no acceptable reason why rent was not paid on time the other 6 months in question.

As a result, I find pursuant to s. 55(1) of the Act that the Landlords are entitled to an Order of Possession to take effect on December 20, 2009. I also find that the Tenants have not paid rent for December 2009 and as a result, I award the Landlord rent arrears of \$103.23 for December 1 – 8, 2009 and a loss of rental income for the period December 9 – 20, 2009 in the amount of \$154.84 plus the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit plus accrued interest in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as follows:



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Unpaid rent:	\$103.23
Loss of rent:	\$154.84
Filing fee:	<u>\$50.00</u>
Subtotal:	\$308.07
Less: Security deposit:	(\$200.00)
Accrued interest:	<u>(\$2.01)</u>
Balance owing:	\$106.06

Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession to take effect on **December 20, 2009** and a Monetary Order in the amount of **\$106.06** have been issued to the Landlords and a copy of the Orders must be served on the Tenants. 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.

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: December 08, 2009.

Dispute Resolution Officer