



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC, FF, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2009, to cancel a One Month Notice to End Tenancy for Cause dated November 5, 2009, for an Order that the Landlord comply with the Act by issuing rent receipts and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on or about June 1, 2007. Rent is \$450.00 per month payable in advance on the 1st day of each month. The Tenant did not pay November 2009 rent when it was due and as a result on November 2, 2009, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenant paid November 2009 rent on November 5, 2009. The Landlord claimed that the Tenant also made the following late rent payments:

- May 5, 2009;
- July 4, 2009;
- September 3, 2009; and
- October 2, 2009

As a result of these alleged late payments, the Landlord said he served the Tenant in person on November 5, 2009 with a One Month Notice to End Tenancy for Cause which stated that the Tenant was repeatedly late paying rent.

The Tenant claimed that the Landlord gave him permission to pay rent for May 2009 on the 5th because he was going to be out of town working on the 1st. The Landlord claimed that the Tenant told him he would be paying May rent late but denied that he gave the Tenant permission to pay late. The Tenant admitted that he paid rent late for July and November, 2009.

The Tenant also claimed that he tried to make arrangements with the Landlord to pay rent for September and October 2009 early because he knew he would not be around on the 1st but that the Landlord would not pick it up earlier. The Landlord denied that

Residential Tenancy Branch
Ministry of Housing and Social Development

the Tenant tried to pay rent early for September and October 2009 and argued that the Tenant could have dropped off his rent payments at his office if he wanted to pay early. The Landlord said that when he arrived at the rental unit on October 1, 2009 to pick up the Tenant's rent, a female person at the rental unit told him that the Tenant was across the street doing laundry. The Landlord said the Tenant contacted him at 7:00 p.m. later that evening and asked him to come back to pick up the rent but the Landlord could not as he had to collect rent from approximately 90 other rental units.

The Tenant argued that the Landlord did not issue receipts for his rent payments which were mostly paid in cash. The Tenant provided some copies of receipts for rent payments created by him only 2 of which were signed by the Landlord.

Analysis

Section 46(4) of the Act says that if a Tenant pays the overdue rent within 5 days of receiving a 10 Day Notice to End Tenancy, the Notice has no effect. I find that the Tenant received the 10 Day Notice on November 2, 2009 but paid the overdue rent on November 5, 2009 and as a result, the 10 Day Notice is of no force and effect.

Section 26(2) of the Act says that a Landlord must provide a tenant with a receipt for rent paid in cash. The Landlord gave the Tenant receipts for January, February, March, April, June, August, November and December 2009. Although there are no receipts for May, July, September and October, 2009, the Parties agree on the dates that rent was paid for those months. RTB Policy Guideline #38 says that "three late payments are the minimum number sufficient to justify a notice" for repeated late payment of rent. The Landlord claimed that the Tenant was late paying rent in May, July, September, October and November 2009.

The Parties agree that the Tenant advised the Landlord that he would be making a late payment for May 2009. The Landlord claimed he did not give the Tenant permission to pay late. The Tenant claimed that the fact that the Landlord did not give him a 10 Day Notice that month is evidence that he had the Landlord's permission to pay late. The Landlord's evidence was that it was his practice to collect the rent on the 1st of each month and to give Tenant's a warning letter if rent was not paid on the 1st and a 10 Day Notice if rent was not paid by the 2nd.

However, the Tenant admitted that he **did not** have the Landlord's permission to pay late in July or September 2009 and there is no evidence that he was issued 10 Day Notices by the Landlord for those late payments. Consequently, I cannot conclude that the Landlord's failure to give the Tenant a 10 Day Notice for not paying May rent on time meant that the Landlord was condoning a late rent payment for May 2009. In the



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

absence of any other evidence to support the Tenant's claim that he had permission to pay late for May 2009, I find that he did not have the Landlord's permission to pay late.

The Tenant also argued that he made late payments in September and October 2009 because the Landlord would not pick up his rent payment early. According to both Parties, it was the Landlord's practice to collect rent from the Tenant on the 1st day of each month. Section 26 of the Act says that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act or tenancy agreement." In other words, it is the Tenant's responsibility to pay rent when it is due and not the Landlord's.

If the Tenant was not available (whether he was out of town or not) to give his rent payment to the Landlord when the Landlord came to collect it on the 1st of the month, the Tenant was responsible for ensuring that he delivered it to the Landlord on or before the 1st of each month. Consequently, I find that it was due to the Tenant's neglect that he paid rent late in September and October 2009. The Tenant also admitted that he paid rent late in July 2009 for which he was issued a warning letter and in November 2009 for which he was issued a 10 Day Notice.

Based on the foregoing, I find that the Tenant was late paying rent for May, July, September, October and November 2009. As a result, I find that the Tenant has been repeatedly late paying rent and that Landlord has grounds for issuing the One Month Notice. Consequently, the Tenant's application to cancel the One Month Notice is dismissed. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect on December 31, 2009.

As the Tenant has been unsuccessful in setting aside the One Month Notice to End Tenancy for Cause, his application to recover his registered mail and money order expenses and the filing fee for this proceeding are also dismissed.

Conclusion

The Landlord has been issued an Order of Possession to take effect on December 31, 2009. A copy of the Order must be served on the Tenant and may be enforced in 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: December 17, 2009.

Dispute Resolution Officer