

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated March 8, 2010.

The Tenant dialled into the conference call approximately 8 minutes after the hearing started and as a result, the Dispute Resolution Officer repeated all of the instructions and information that had been dealt with to that point.

At the beginning of the hearing, the Tenant confirmed that she had received the Landlord's evidence package however she claimed that the RCMP advised her not to open it because it appeared to have been opened and re-sealed. The Tenant claimed that the Landlord left another evidence package at her door and argued that the Landlord had not complied with the time limits for service of documents under the Rules. The Landlord argued that the Tenant has had a long history of not accepting documents in person or delivered by registered mail and then arguing that because she had not received them that she was not served. The Tenant provided no evidence to support her claim that she was ordered by the RCMP not to open the Landlord's evidence package and I find that she was properly served with them.

Part way through the hearing the Tenant became argumentative and began interrupting the Landlord's evidence and when asked to stop doing so by the Dispute Resolution Officer, the Tenant left the conference call. The hearing was halted for approximately 10 minutes to allow the Tenant an opportunity to dial back in but she did not do so by the time the hearing had ended (after a total of 45 minutes). Both Parties filed documentary evidence which was reviewed and considered.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month to month tenancy started on June 1, 2002. Rent is \$700.00 per month payable in advance on the 1st day of each month. On March 8, 2010 the Landlord's building manager served the Tenant with a One Month Notice to End Tenancy for Cause dated March 8, 2010 by posting a copy on the rental unit door and by sending it by registered mail. The Notice alleged that the Tenant was repeatedly late paying rent.

The Landlord said that the Tenant initially paid rent by authorizing a direct withdrawal from her bank account each month. The Landlord claimed however that the Tenant

stopped these direct payments for the months of May, June and July 2009. Consequently, on July 7, 2009, the Landlord gave the Tenant a letter advising her that the Landlord would cancel the direct withdrawal and that the Tenant would have to deliver her payments to the Landlord. The Landlord said that the usual method of payment was for tenants to pay the building manager on the 1st of each month either in person or to leave their payments in a drop box. The Landlord claimed that after July 2009, the Tenant made her payments in person at the Landlord's business office in cash and was issued a receipt on the date of payment.

In support of the grounds on her One Month Notice, the Landlord provided a copy of a tenant ledger showing that the Tenant made the following additional late payments:

- August 2009: August 4 and 5, 2009;
- September 2009: September 3, 2009;
- October 2009: October 5, 2009;
- November 2009: November 4, 2009;
- December 2009: December 7, 2009;
- January 2010: January 11 and 12, 2010;
- February 2010: February 8, 2010;
- March 2010: March 5, 2010.

The Landlord said that the Tenant advised her in July 2009 that she had to make late payments because the police had frozen her account. Consequently, the Landlord said, she gave the Tenant some latitude until she could get her affairs sorted out. However, the Landlord claimed that the Tenant continued to make late payments and could not provide any evidence of the police having frozen her account and as a result, on December 4, 2009, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said the Tenant was also served with 10 Day Notices for Unpaid Rent on January 6, 2010, February 2, 2010 and March 2, 2010. The Landlord said she also gave the Tenant a Breach Letter on February 2, 2010 advising her that any further late payments would result in her being served with a One Month Notice to End Tenancy .

In her written submissions, the Tenant claimed that when the 1st of the month falls on a weekend or holiday, she makes her rent payment the following business day that the Landlord's office is open. The Tenant also alleged that there was an investigation into a fraud complaint whereby some WCB cheques of hers were stolen by an employee of her bank some months earlier and that the Landlord may have been involved in this. Consequently, the Tenant claimed that the RCMP instructed her not to pay the Landlord on the 1st of the month. The Tenant also claimed that she was advised by WCB that someone else had been cashing her WCB cheques more recently but would not say who. The Tenant also made a number of other unsubstantiated fraud allegations about the Landlord in her written submissions but I find that none of them are relevant to her application in this matter.

Analysis

RTB Policy Guideline #38 states “three late payments are the minimum number sufficient to justify a notice under these provisions.”

I find that the Tenant was given a great deal of latitude (4 months) by the Landlord to get her financial affairs in order when she claimed that her rent payments were late due to her account having been frozen. I also find that as of December 2009, when the Tenant received a 10 Day Notice for unpaid rent, she was given notice by the Landlord that any further late payments would not be tolerated. However, despite these warnings, I find that the Tenant was late paying her rent for January, February and March 2010.

Although the Tenant argued that she paid her rent on the first business day of the month, I find that that was not the case. For example, the first business day of January 2010 was January 4, 2010, however the Tenant paid her rent in two instalments on January 11 and 12, 2010. Similarly, the first business day of February 2010 was February 1, 2010, however the Tenant paid her rent on February 8, 2010. Finally, the first business day of March 2010 was March 1, 2010 however the Tenant did not make her rent payment until March 5, 2010. Furthermore, there the Tenant provided no evidence to support her allegation that she could not pay her rent on the 1st of each month due to her account being frozen or due to some directive of the RCMP.

Consequently, I find that the Landlord has grounds for issuing the One Month Notice to End Tenancy for Cause dated March 8, 2010 and the Tenant’s application to cancel it is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Conclusion

The Tenant’s application is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession 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: May 03, 2010.

Dispute Resolution Officer