

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy for repeated late payment of rent, issued to him by 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the hearing of May 28, 2010, was adjourned to today, in order for the Tenant to provide a copy of the Notice to End Tenancy in evidence and for the Landlord to provide a copy of the Tenant's rent payment ledger to the Tenant, which the Tenant alleged he did not receive in the Landlord's original evidence package.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

The Tenant was served with a one month Notice to End Tenancy by the Landlord on March 31, 2010, by posting on the rental unit door (the "Notice"). Under the Act when a document is served by posting on the door it is deemed served three days later. As the Tenant was required to have one month Notice under the Act, the effective end date indicated on the Notice of April 30, 2010, would automatically correct to May 31, 2010, under section 53 of the Act.

The Landlord alleged in the Notice that the Tenant is repeatedly late paying rent.

The Agent for the Landlord explained the Landlord had served the Tenant with a notice of rent increase on or about April 20, 2009. The rent increase was in the amount of \$25.00 and was effective on August 1, 2009.

The Tenant acknowledged he received the rent increase notice and he testified he forwarded it before August 2009, it to the authority which provides the Tenant with rental assistance payments.

The rent assistance cheque provided to the Landlord for August 1, 2009, did not pay the rent in full and was \$25.00 short. The Tenant testified he paid the \$25.00 to the Landlord for the August out of his own pocket.

The rent assistance cheques to the Landlord continued to be \$25.00 short for the months of September, October, November, and December of 2009, and then January, February and March of 2010. The Tenant continued to make up these shortfalls by making payments to the Landlord out of his own pocket.

The Tenant testified he contacted the authority paying the rent assistance payments in August of 2009, and then in December of 2009. He alleges he was informed by a worker at the authority, that there was a problem changing the amount of his assistance cheques in the computerized system.

During the course of the hearing the Tenant testified that this worker was available to be called in as a witness to these problems. The Tenant provided a phone number and the conference call operator was used to attempt to bring the witness into the hearing to give testimony. The conference call operator explained that the telephone number, provided by the Tenant, was not being answered.

The Tenant further testified that his memory had been refreshed when he looked at the Landlord's ledger of rental payments and he agreed he had been late paying rent three or four times.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has provided insufficient evidence to prove the one month Notice to End Tenancy should be cancelled.

By his own admissions the Tenant acknowledged he had been late paying rent three or four times in the past ten months.

The policy guideline for repeated late payments of rent includes the following explanation:

"Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late."

I do not find the late payments of rent by the Tenant were sufficiently far apart to not be considered repeatedly late. It is clear from the testimony, and all the evidence, that the Tenant was repeatedly late paying his rent in full.

Whether or not this was due to an error by the authority issuing the Tenant's rent assistance, the Tenant's own evidence was that he did not contact the authority between August and December of 2009. Furthermore and regardless of the reasons for being late, the Tenant was responsible for ensuring his rent payments were made in full and on time. I find he failed to do this.

Therefore, I dismiss the Application of the Tenant.

Following my dismissal of the Tenant's Application, the Agent for the Landlord orally requested an order of possession for the rental unit. Under section 55 of the Act, I must grant that request.

He testified the Tenant's rent had been paid to the end of June 2009, and the Landlord was holding and not processing the July rent payment. The Agent for the Landlord was satisfied with an order of possession for the rental unit **effective at 1:00 p.m. on June 30, 2010**, and I grant and issue an order in those terms. This order 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: June 25, 2010.

Dispute Resolution Officer