



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

AMENDED DECISION

Dispute Codes CNC OP FF

Introduction

This hearing dealt with (a) an application by the tenant for an order setting aside the landlord's Notice to End Tenancy dated July 30, 2010; and (b) an application by the landlord for an order of possession and recovery of the filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Are either of the parties entitled to the orders requested?

Background and Evidence

This tenancy began in November 2006. The rent is \$500.00 due in advance on the first day of each month. The rental unit is located in the basement of the landlord's family home. The tenant is on welfare and \$400.00 of his rent is paid directly to the landlord each month. On July 30, 2010 the landlord served the tenant with a one-month Notice to End Tenancy for repeated late payment of rent. The tenant disputed the Notice on August 4, 2010.

Mr. S testified that the tenant has been late paying his rent every month this year except January and March. Mr. S says the rent is usually received sometime between the 3rd and 7th day of the month. Mr. S testified that he has asked the tenant to go with him to the welfare office to arrange for the cheques to be that the tenant has refused.

For his part, Mr. S testified that the rent is sent directly to the landlord by the welfare office and that it is not his fault that it does not arrive by the first of the month. Mr. S testified that the mailman and the welfare office are responsible for the date that the cheques are received by the landlord and that he cannot control this.

Analysis

The question of what constitutes 'repeated late payment of rent' within the meaning of the Act is dealt with in *Residential Tenancy Policy Guideline No. 38* which provides as follows:

The Residential Tenancy Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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 a dispute resolution officer may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by a dispute resolution officer to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by a dispute resolution officer in determining whether a tenant has been repeatedly late paying rent.

In the present case, the tenant has been late paying the rent more than three times and I am not satisfied that any exceptional circumstances exist which might excuse or explain the tenant's late payments. The fact that the rent payments are not being received on time by the landlord is the responsibility of the tenant regardless of where the money originates. In other words, it is incumbent on the tenant to ensure that the welfare office is sending the cheques out in a timely manner so as to ensure the rent is received on the date that it is due.

Conclusion

Based on all the evidence before me, I am satisfied that the landlord has proved its case. I therefore dismiss the tenants' application for an order setting aside the landlord's Notice to End Tenancy and grant the landlord an order of possession effective two days from the date of service. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order the tenant to pay to the landlord the sum of \$50.00 representing the fee paid by the landlord for this application.

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*.

Amended: October 12, 2010

Dispute Resolution Officer