



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery on January 27, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2001 as a month to month tenancy. Rent is \$1,224.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$512.50 on August 28, 2001.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 17, 2011. She served the Notice on January 17, 2011 by posting the Notice on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice was February 28, 2011. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that the Tenant has numerous late rent payments which are a breach of a material term of the tenancy agreement. The Landlord continued to say she wrote the Tenant a letter dated September 9, 2011 stating that failure to pay the rent on time would result in a Notice to End Tenancy. The Landlord said the Tenant continued to pay the rent late in October, 2011, November, 2011 and January, 2011.

The Landlord continued to say the late rent payments are the main reason for the Notice to End Tenancy. The other issue of the additional occupants in the unit and the

potential subletting of the unit are not her first concern. The Landlord said it is her understanding that the father of the Tenant's children a Mr. P.M. is living in the unit without authorization from the Landlord. She said this is a breach of the tenancy agreement as well.

The Landlord requested an Order of Possession with an effective vacancy date of February 28, 2011, if the Tenant's application to cancel the Notice to End Tenancy is unsuccessful.

The Tenant said that she agreed that her rent payments were late on a number of occasions, but she said she is trying her best to pay the rent as soon as she has the money. The Tenant said in many cases the rent is only a few days late and she has always paid the full amount of the rent.

The Tenant continued to say that she had made an application in August, 2010 for Mr. P.M. to be added to the tenancy, but she had not heard anything from the Landlord until they went to the Landlord's office in January, 2011. The Tenant said at that meeting she was told Mr. P.M. did not qualify as a tenant. The Landlord said she told the Tenant that Mr. P.M. did not qualify as a tenant in September or October, 2010.

The Tenant continued to say it is important for her family to continue living in the unit and the housing complex and she hoped the Landlord would reconsider the situation and let her stay in the rental unit. The Tenant offered to pay the rent on time if Mr. P.M. could be added to the tenancy agreement and if they could continue to live in the rental unit.

The Landlord said she would decline the Tenant's offer and she said she wants to continue with the Notice to End Tenancy dated January 17, 2011.

Analysis

Section 26(1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As well: **Section 47** of the Act says a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

- (b) the tenant is repeatedly late paying the rent
- (c) there are an unreasonable number of occupants in the rental unit

(h) the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after receiving written notice from the landlord.

(i) the tenant purports to have assigned or sublet the unit without the landlord's written consent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due and the Tenant has been late with the rent payment 9 of the last 12 months in the tenancy. The Landlord wrote the Tenant a letter on September 9, 2010 to advise the Tenant that the rent payments had to be made on time or the Landlord would issue a Notice to End Tenancy. Following this letter the Tenant was late with the rent 3 of the next four months. Repeated late payments of rent that are not corrected after receiving a written request to pay the rent on time is a material breach of the tenancy agreement. The tenant has not provided evidence or testimony that establishes grounds to justify the late rent payments, I find the Tenant has not proven her case to be granted an order to cancel the Notice to End Tenancy. The Landlord's 1 Month Notice to End Tenancy for Cause dated January 17, 2011 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect February 28, 2011, after service of it on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective February 28, 2011, after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession 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*.

Residential Tenancy Branch