



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy for repeated late payment of rent and to recover the filing fee for the Application.

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.

Issue(s) to be Decided

Is the one month Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

An Agent for the Landlords testified and submitted evidence that the rent is due for the rental unit on the first day of the month, pursuant to a written tenancy agreement signed by the parties on November 27, 2002.

The Agent testified and submitted evidence that the Tenants' rent cheques for January and February of 2011, were both returned by their financial institution due to insufficient funds.

The Tenants paid the January 2011 rent on January 12, 2011.

The Landlords issued the Tenants a 10 day Notice to End Tenancy for unpaid rent on February 11, 2011, by posting on the door.

The Tenants paid their February 2011 rent on February 15, 2011.

The Landlords issued a 10 day Notice to End Tenancy for unpaid rent on March 4, 2011, by posting on the door.

The Tenants paid their March rent on March 15, 2011.

On March 16, 2011, the Landlords served the Tenants with a one month Notice to End Tenancy for repeated late payment of rent. The effective date of the Notice is April 30, 2011.

On April 5, 2011, the Landlord served the Tenants with a 10 day Notice to End Tenancy for unpaid rent.

The Tenants paid the April rent on April 7, 2011.

In reply, the Tenants testified that they agreed the rent cheques for January and February were returned NSF.

The Tenants dispute they had been late paying rent in March or April. They testified that the Agent for the Landlord should have told them they were out of post-dated rent cheques in March of 2011, and that is why the Tenants were late paying rent.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I **find that the one month Notice to End Tenancy is valid and should not be cancelled**, as the Tenants have paid their rent late four times in the past four months.

Under section 47 of the Act, the Landlords may end a tenancy if the Tenants are repeatedly late paying rent. Under the policy guideline 38, three late rent payments are required to justify such a notice. Here the Tenants have been late four consecutive months. It is the Tenants' obligation under the Act and the tenancy agreement to make sure the Landlords are paid on time.

Therefore, I find that the Tenants' Application should be dismissed.

Upon my dismissal of the Tenants' Application, the Agent for the Landlords requested possession of the rental unit on the effective date of the Notice.

Under section 55 of the Act, I must grant that request. I grant and issue the Landlords an order of possession **effective at 1:00 p.m. on April 30, 2011.**

This order may be filed and 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: April 15, 2011.

Residential Tenancy Branch