



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on December 01, 2010. The rent is \$900.00 due on the first of the month.

On July 05, 2011, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reasons;

- Tenant is repeatedly late paying rent
- Tenant has put the landlord's property at significant risk.

The landlord stated that the tenant is consistently late paying rent. The tenant filed a statement into evidence in which he states that he always paid rent on or before the 4th of each month. He admitted that he didn't pay on the 1st of each month because the 1st fell on a weekend or a holiday and it was not convenient to pay rent.

The tenant stated that the landlord told him that he could pay by the 5th of each month and therefore he was not late paying rent when he paid on the 4th of each month. The landlord stated that he reminded the tenant several times that rent was due on the 1st of each month and during the course of the tenancy has served the tenant with three notices to end tenancy for nonpayment of rent. The tenant agreed that he was served with three 10 day notices to end tenancy with instructions to pay within five days and he always did so.

The tenant complained that the landlord was being unreasonable by serving him with an eviction notice for rent paid just a few days after the first of each month.

Analysis

In order to support the notice to end tenancy, the landlord must prove that one or more of the reasons for the notice to end tenancy applies. Based on the testimony of both parties, I find that the tenant was repeatedly late paying rent. The landlord served the tenant with three notices to end tenancy for nonpayment of rent during the course of the eight month tenancy, but the tenant continued to pay rent late.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Since December 2010, the tenant was late paying rent every month. Therefore, I find that the landlord has proven one of the reasons to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 p.m. on August 31, 2011.

The tenant must bear the cost of filing 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*.

Dated: August 11, 2011.

Residential Tenancy Branch