



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

On October 17, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has been repeatedly late paying rent.

The landlord testified that the tenant has repeatedly been late paying the rent and has submitted receipts dating back to October 2010 that reflect late rent payments every month for the past 12 months with the exception of April and September 2011.

The landlord stated that he would go to the property on the 1st of the month to pick up the rent from this tenant and another tenant who resides in a separate unit on the property. The landlord stated that the tenant continually asked the landlord to come back on the 5th for the rent as he would not have it available on the 1st. The landlord stated that he would then return on the 5th and often times the tenant would not be home or would request another delay. The landlord stated that he then started calling the tenant a day or two prior to the 1st of the month and remind him that he would be by to pick up the rent but that the tenant still did not pay the rent on time.

The tenant testified that he had almost always paid the rent on time and stated that he had given the landlord an extra \$20.00 per month when the rent was late. The tenant stated that the landlord did not always come to the rental unit on the 1st and that was why the receipts reflected late payments. The tenant requested to have the notice set aside and that he should not have to move in winter; the landlord declined this request.

The tenant offered to pay the rent in advance and asked for end of tenancy date to March 31, 2012 however the landlord stated that he had tried to work with the tenant in the past to no avail and that he would not consider extending the end of tenancy date to March 31, 2012 as he was not trusting that the tenant would vacate.

The landlord has however offered to change the end of tenancy date from November 30, 2011 to that of January 31, 2012.

The landlord per section 55 of the *Act* has verbally requested an order of possession effective January 31, 2011.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to have the landlord's October 17, 2011, 1 Month Notice to End Tenancy for Cause set aside.

I accept the landlord's testimony and evidence that the tenant has repeatedly paid the rent late. The landlord's evidence confirms late rent payments 10 out of the 12 last months and Residential Tenancy Policy Guideline 38 clearly notes that *'three late payments are the minimum number sufficient to justify a notice under these provisions.'*

And while the tenant stated that rent was late due to the landlord not coming to pick it up on the first of the month, the tenant had not provided and evidence to support this claim.

Residential Tenancy Act **section 47 Landlord's notice: cause**

(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline **38 Repeated Late Payment of Rent**

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² both provide 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 an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on January 31, 2012 at 1:00 PM.

The landlord per section 55 of the Act verbally requested an order of possession for the rental unit with an order of possession date of January 31, 2012 and that request has been granted.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, January 31, 2012**. This Order must be served on the **Tenant(s) and All Occupants** and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 3, 2011.

Residential Tenancy Branch