



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

During the hearing the landlord verbally requested an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to disregard a 1 Month Notice to End Tenancy, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in February 1999 as a month to month tenancy with a security deposit of \$227.50 paid. They also agree the rent, due on the 1st of each month, was recently reduced to \$227.00 resulting from a previous Dispute Resolution Decision.

Despite a copy of the notice to end tenancy not being submitted into evidence by either party, both parties agree a 1 Month Notice to End Tenancy for Cause was issued on October 24, 2011 with an effective vacancy date of November 3, 2011 citing the tenant was repeatedly late paying rent and that the tenant or a person permitted on the rental property had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified he served the notice on October 24, 2011 by placing it in her mailbox. The tenant applied to dispute the notice on November 29, 2011.

The landlord testified that in 2011 alone the tenant has been late in paying rent or provided the landlord with non-negotiable cheque for the payment of rent for the months

of April, June, July and October. The landlord states that when rent is due most tenants have provided post dated cheques but for those who do not he collects rent by going to each tenant's unit. The landlord states that this tenant often is not there and she will later leave the rent under her mat and call the landlord to tell him it is there.

The tenant testified that she has also left the rent with a number of other tenants over the course of her tenancy or under the mat and she has then called the landlord to tell him where he can pick it up. The landlord testified that if she does this it is usually after the day rent is due.

In relation to the cheque for rent for the month of October, the landlord stated that it was returned as insufficient funds. The tenant testified that it did not clear because she had her paycheque with her while she was stranded on the Coguihalla and she had been unable to deposit her cheque.

The tenant testified that she was on the Coguihalla on November 2, 2011 but could not provide any explanation why failing to deposit a cheque on November 2, 2011 would have any impact on a cheque that should have been issued on October 1, 2011.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant is repeatedly late paying rent; or
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;

I find the tenant received the landlord's notice no later than October 27, 2011, 3 days after it was served in accordance with Section 90 of the *Act*.

Section 47 (4) states that a tenant who receives such a notice may dispute it by submitting an Application for Dispute Resolution within 10 days after the date the tenant received the notice. Section 47(5) states that if a tenant does not file an Application she is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As the tenant did not file her Application until November 29, 2011, a full one month after she received the Notice to End tenancy I find she failed to file her Application within the 10 day time frame required under Section 47(4).

Further, based on the conflicting testimony provided by the tenant, I find her testimony to be unreliable and in the absence of any corroborating evidence or testimony from any of her witnesses, who could not attend the hearing, I find the tenant has failed to substantiate her claim that she has never paid rent late.

For these reasons, I find the 1 Month Notice to End Tenancy issued on October 24, 2011 to be effective and enforceable. However, in accordance with Section 53 I find the effective date was to be November 30, 2011. I dismiss the tenant's Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 13, 2011.

Residential Tenancy Branch