

Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to have the Landlord provide services and facilities, to allow a rent reduction and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 6, 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.

At the start of the Hearing the Dispute Resolution Officer informed the parties that the application is to contest a Notice to End Tenancy for Cause and the monetary claim by the Tenant is a separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within one application. The Tenant's monetary claim is dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Landlord's Notice to End the Tenancy?

Background and Evidence

This tenancy started on June 1, 2007 as a month to month tenancy. Rent is \$739.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 on June 4, 2007.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated October 4, 2011 with an effective vacancy date of December 1, 2011. He served the Notice on October 8, 2011 by posting it on the Tenant's door. The reasons given for issuing the Notice are repeatedly late with rent payments and extraordinary damage to the rental unit. The Landlord provided written list of the rent payment dates for 2011 in the evidence to show that the Tenant has been late in paying the rent 7 months in this calendar year. As well the Landlord included copies of 2 cancelled cheques for the rent; one was dated October 7, 2011 and the other August 3, 2011.

Dispute Resolution Services

Page: 2

Residential Tenancy Branch Office of Housing and Construction Standards

The Landlord continued to say the second reason for the Notice to End Tenancy is that the Tenant had a flood in the rental unit which damaged the floors and the Tenant has not repaired the floors as of yet. The Landlord asked for an Order of Possession if the Tenant's application is not successful.

The Tenant said he has paid all his rent and that any late payments were done with the agreement of the Landlord. The Tenant continued to say the Landlord has only given him one 10 Day Notice to End Tenancy for unpaid rent which was for this October, 2011. The Landlord said he has not agreed to accept late rent payments as he has a mortgage to pay on the first of each month which is what the rent payments are for. The Tenant said he has had many late rent payments over the tenancy.

The Tenant said the damage to the floor in the rental unit has been caused by a leak from the upper rental unit into his unit and from the sink backing up in his unit. The Tenant said the Landlord and him agreed the floor will be repaired when he moves out and it will be paid by either his insurance company or the Landlord's insurance company. Landlord said he would like the repaired done before the Tenant moves out of the unit.

The Tenant concluded by saying he believed the landlord is mad at him and that is why the Landlord is trying to evict him. The Tenant said he believes he had the Landlord's agreement to be late with the rent payments and the damage to the floor is not completely due to his actions.

The Landlord concluded that he did not agree to the Tenant being late with the rent payments and he believes the flood in the Tenants unit was due to the Tenant's negligence. The Landlord requested an Order of Possession for the effective vacancy date on the 1 Month Notice to End Tenancy for Cause of December 1, 2011.

Analysis

Residential Tenancy Policy Guideline 38 says that a landlord may end a tenancy where the tenant is repeatedly late paying the rent. Three late payments are the minimum number sufficient to justify a notice under these provisions and a landlord must act in a timely manner after the most recent late rent payment.

Both the Landlord and the Tenant agree that the Tenant has been late with many rent payments. The Tenant said he had the Landlord's agreement to be late with the payments, but the Landlord disagrees and said he did not agree to the rent payments being repeatedly late. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. The Landlord has submitted a list of rent payment dates and two copies of

Residential Tenancy Branch
Office of Housing and Construction Standards

canceled cheques to support his position. The Tenant said he had no proof to indicate the Landlord and the Tenant had an agreement to pay the rent late. I accept the Landlord's evidence and testimony; I find the Tenant has not established grounds to be awarded an order to cancel the Notice to End Tenancy dated October 4, 2011. Consequently I dismiss the Tenant's application to cancel the Notice to End Tenancy and I award the Landlord an Order of Possession with an effective vacancy date of December 1, 2011.

Conclusion

I dismiss the Tenant's application to cancel the Notice to End Tenancy for Cause dated October 5, 2011 without leave to reapply.

The Tenant's monetary claim is dismissed with leave to reapply.

An Order of Possession effective December 1, 2011 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession 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*.

Dispute Resolution Officer