

DECISION

Dispute Codes: CNR; CNC; CNL; RR; FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a *10 Day Notice to End Tenancy*, *One Month Notice to End Tenancy for Cause* and a *Two Month Notice to End Tenancy for Landlord's Use*; for an Order reducing the rent for repairs, services or facilities agreed upon by not provided; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents on December 31, 2011, by handing the documents to the Landlord.

Preliminary Matters

At the outset of the Hearing, it was determined that the Landlord did not issue a *10 Day Notice to End Tenancy* or a *Two Month Notice to End Tenancy for Landlord's Use*. Therefore, the Tenant's application to cancel these documents is dismissed as they do not exist. The Hearing continued with respect to the remainder of the Tenant's application.

The Tenant did not provide the Residential Tenancy Branch or the Landlord with any documentary evidence.

The Landlord provided copies of her documentary evidence, including a copy of the *One Month Notice to End Tenancy for Cause*, to the Tenant by placing the documents in the Tenant's door jamb at approximately 5:00 p.m. on January 9, 2012. The Tenant objected to the late service of the Landlord's documents, stating that he had not had time before the Hearing to consider it. The Tenant asked for an adjournment.

I asked the Tenant why he did not provide a copy of the *One Month Notice to End Tenancy for Cause* when he filed his Application for Dispute Resolution. He was unable to adequately explain and after I made several attempts to rephrase my question so that he could understand it, he replied that an Information Officer had told him that he didn't have to file any documentary evidence until the Respondent/Landlord provided him with her documents.

I referred the Tenant to the Notice of Hearing documents he served on the Landlord on December 31, 2011, and in particular to the Instructions for Evidence Processing sheets that were included in those documents. I also referred him to the bottom of the document that instructs the parties how to sign into the Hearing, which contains the following statement:

GENERAL INFORMATION about your responsibility and the hearing

1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

I explained to the Tenant that I would not grant his application to adjourn the hearing because it would be prejudicial to the Landlord. I also explained that if the Landlord's evidence, more particularly the *One Month Notice to End Tenancy for Cause*, was not considered then I would have no alternative but to dismiss his Application. I cannot cancel or uphold a notice to end tenancy if I cannot study it to ensure that it provides valid reasons to end the tenancy or that it complies with the provisions of the Act with respect to form and content.

The Landlord and the Tenant requested that the copy of the *One Month Notice to End Tenancy for Cause* provided by the Landlord be considered. The remainder of the Landlord's documentary evidence was not considered because the Landlord did not provide copies to the Tenant within the time lines required by the Rules of Procedure.

Issues

- Is the *One Month Notice to End Tenancy for Cause* issued December 17, 2011 (the "Notice"), a valid notice?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The Landlord testified that the Tenant moved into the rental unit half way through a rental period, and made his first rent payment on January 15, 2011.

The Landlord testified that she served the Tenant with the Notice on December 17, 2011, by handing the document to the Tenant with a witness present. She stated that she realized that the effective date of the end of the tenancy was incorrect on the Notice, so she amended it and re-served the Tenant with the amended Notice on December 18, 2011, by posting the Notice to the Tenant's door at the rental unit.

The Landlord testified that the Tenant has been repeatedly late paying rent. She stated that rent is \$850.00, due on the first of each month and that the Tenant made the following late payments:

Rent due February 1, 2011: \$425.00 paid "two weeks late", balance paid March 1, 2011

Rent due March 1, 2011: \$425.00 paid March 1, balance paid "three weeks late"

Rent due April 1, 2011: Rent paid April 21, 2011

The Tenant submitted that the tenancy agreement does not stipulate the day of the month on which rent is due.

The Landlord testified that the tenancy agreement stipulates that rent is due on the first day of each month.

The Landlord asked for an Order of Possession effective January 31, 2012.

Analysis

The Notice provides the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and put the Landlord's property at significant risk.
- Tenant has caused extraordinary damage to the unit or property.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The onus is on a landlord to prove that the tenancy should end for the reason(s) provided on the notice to end tenancy. In this case, the Landlord did not provide a copy of the tenancy agreement within the time frames required by the rules of procedure and therefore her evidence was not considered. I find that the Landlord did not provide sufficient evidence that rent was due on the first day of each month. This was a month to month tenancy which began on the 15th day of January, 2011, and therefore I find that rent was due on the 15th day of each month. Based on the undisputed testimony of Landlord with respect to the dates that rent was paid in February, March and April, 2011, I find that the Tenant was late paying rent three times within a year. I find that February's rent was not paid in full until March 1, 2011; March's rent was not paid until after March 15, 2011; and April's rent was not paid until April 21, 2011. Therefore, the Landlord has reason to end the tenancy as provided on the Notice. As I found that the Landlord has proven cause to end the tenancy for repeated late payment of rent, it was not necessary to consider the other reasons to end the tenancy that were listed on the Notice.

I find that the Notice is a valid Notice and the Tenant's application to cancel it is dismissed.

The tenancy is ending and therefore the remainder of the Tenant's application is also dismissed.

Section 55(1) of the Act states:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of

possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

An incorrect end of tenancy date does not invalidate a notice to end tenancy. Section 53 of the Act stipulates that the notice is deemed to be changed to reflect the correct effective date. Based on the testimony of the parties, I am satisfied that the Tenant received the *One Month Notice to End Tenancy for Cause* on December 17, 2011.

Section 47(2) of the Act provides that a One Month Notice to End Tenancy for Cause must end the tenancy not earlier than one month after the date the Notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Therefore, I find that the effective date of the end of the tenancy is February 14, 2012. Pursuant to the provisions of Section 55 of the Act, I find that the Landlord is entitled to an Order of Possession effective 1:00 p.m., February 14, 2012.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., February 14, 2012**. This Order must be served on the Tenant 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: January 12, 2012.

Residential Tenancy Branch