



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenants; the landlords and the landlords' agent.

The landlords verbally requested an order of possession during this hearing, pursuant to Section 55 of the *Residential Tenancy Act (Act)*, that if the tenants are unsuccessful in their Application seeking to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *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 submitted a copy of a tenancy agreement signed by the parties on April 16, 2011 for a two year fixed term tenancy beginning on May 1, 2011 for a monthly rent of \$1,325.00 due on the 1st of each month, with a security deposit of \$662.50 and a pet damage deposit of \$662.50 paid on May 1, 2011.

The tenants submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 8, 2012 with an effective vacancy date of March 31, 2012 citing the tenants have repeatedly paid rent late.

The landlord's agent testified the landlords' practice is to obtain post dated cheques from all of their tenants at the start of the tenancy and these tenants have been late or incomplete in their payment of rent on the following occasions:

1. July 2011 – the tenant's rent cheque did not clear their bank and was returned to the landlord as insufficient funds;
2. October 2011 – on the tenant's request to hold deposit of the post-dated cheque for October 2011 rent until October 4, 2011 to ensure it would clear;
3. December 2011 – on the tenant's request to pay cash the landlord picked up rent from the tenant on December 1, 2011, but it was \$5.00 short;
4. January 2012 – the tenants contacted the landlord on December 31, 2011 to advise they did not have rent for January 1, 2012. The parties agreed that they had entered into an agreement for the tenants to pay \$300.00 and the male tenant would complete some work on the landlord's yacht for the amount of \$1,030.00 including the balance for January 2012 and December 2011 rents. Further the landlords submit the tenant did not complete the work but paid the landlord \$1025.00 on January 28, 2012 and refused payment for the work completed; and
5. February 2012 – the landlord deposited the rent cheque on February 1, 2012 and on February 3, 2012 the female tenant contacted the landlord and indicated there had been a bank error and the rent cheque would not be clearing. The landlord advised the tenant that if she heard from her bank that it did not clear she would pick up a bank draft from the tenant on February 7, 2012.

The tenants submit the following explanations for these 5 occasions:

1. The tenants do not dispute the July 2011 late payment;
2. The tenants deny ever requesting the landlord to hold rental payment until October 4, 2011;
3. The tenants submit it was at the landlords' request that rent be paid in cash as the landlords would be out of town and would not be able to deposit the rent on December 1, 2012;
4. The tenants submit that they determined the landlords were not going to be satisfied with the work they were doing on the yacht and so because they had used their rent money to pay bills they obtained a loan from the male tenant's employer and paid the rent in the amount of \$1,025.00 on January 28, 2012; and
5. The tenants submit it was at the landlord's request that rent be paid in cash when the female landlord called to the tenant on February 1, 2012.

The female landlord testified they never initiated any requests to the tenants for the payment of rent in cash. She also testified they did not have nor did they leave town at any time indicated in the tenants' submission.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenants are repeatedly late paying rent. Residential Tenancy Policy Guideline #38 stipulates that three late payments are the minimum number of late payments to justify a notice under these provisions.

From the testimony of both parties, I accept the tenants' rental payment for July 2011 was returned as insufficient funds but later paid by the tenants. As such, I find this event counts as one time the tenants were late paying rent.

In relation to the tenants' explanations for December 2011 and February 2012 payments, specifically the tenants' assertions that the landlord request that rent be paid in cash, I find unlikely.

I accept from the landlords' testimony that their practice is to have post-dated cheques from their tenants. In the tenant's testimony she stated the landlord had requested cash for December 2011 because they were not going to be in town on December 1, 2011 and yet it was on December 1, 2011 that the landlord collected from the tenant and deposited the cash payment into her account by bank machine deposit.

Similarly for the payment of rent for February 2012 the tenants assert the landlord requested a cash payment on February 1, 2012 and that because of the previous month the tenants did not want to pay cash so she offered a bank draft that she obtained on February 3, 2012.

From the bank statement submitted by the landlord that notes a deposit for all of their rental units on February 1, 2012 by bank machine and a returned cheque on February 6, 2012 from the tenant's rental post date cheque, I find it unlikely that the landlord would seek a cash payment on the same day they deposited the cheque.

As such, I prefer the landlord's version of events for the payment of rent for February 2012 and find the payment of rent for February 2012 was late and was late as a result of the tenants' actions and not the landlords. I therefore find the landlord has established a second time the tenants have paid rent late.

Despite the inclusion of the landlord's bank statement that shows a deposit was made of \$5.00 less than the amount of rent on December 1, 2011, I find that a deposit notation is not confirmation of an amount received from the tenant and in the absence of any receipts issued by the landlords to the tenants in regard to the cash payment of December 1, 2011, and I find the landlord has failed to establish the tenants did not pay the rent for December 2011 in full. Further, I find rent for December was paid on the day it was due.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As to the circumstances around the payment of rent for the month of January 2012, I accept that the parties made a verbal agreement for the completion of some work on

the landlords' yacht that allowed for the full payment of rent (whether in kind or in cash) to be fulfilled much later in the month than the date rent was due.

As such, I find the landlords cannot include the later payment of rent, regardless of the outcome of the work, in the repeated late payment count because the parties had agreed to this substantially late payment. The landlord did have an opportunity to end the tenancy when the tenant's identified that they would not have rent on January 1, 2012.

From the landlords' bank statement I accept the landlord did hold the tenant's October 2011 payment to be deposited later than the deposits for their other rental properties. In combination with my finding that the tenants' credibility is questionable in relation to rent for December 2011 and February 2012, I prefer the landlord's testimony that the tenants sought to pay rent late for October 2011. As such, I find the landlord has established 3 times that the tenants have been late paying rent.

Conclusion

As I have found the landlord has established cause to end the tenancy in accordance with Section 47, I dismiss the tenants' Application in its entirety.

I find the landlord is entitled to an order of possession effective **March 31, 2012 after service on the tenants**. This order must be served on the tenants. If the tenants fail 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: March 26, 2012.

Residential Tenancy Branch