



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to the tenants' application seeking to cancel a Notice to End Tenancy given for Cause and recovery of the filing fee. While there were other claims made with this application the tenants have withdrawn those claims.

Both parties appeared, the tenants were represented by their agent.

The parties gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving cause to end this tenancy?

Background and Evidence

The landlord submitted a copy of a written tenancy agreement which shows that this tenancy began in November 1997. Rent is due on the 1st day of each month. The landlord submitted a spreadsheet showing that in 2011 and 2012 the tenants have been late paying rent as follows:

Due Date (2011)	Date Paid
April 1	April 4
May 1	May 4
June 1	June 7
July 1	August 1
August 1	August 15
September 1	October 20
October 1	October 20
November 1	November 18
December 1	December 9
2012	
January 1	January 13

February	February 10
March 1	March 9

The landlord submits that she is aware that the tenants have had some financial problems and they have tried to be understanding regarding the late rental payments. However despite numerous warnings and agreements by the tenants that they would pay their rent on time, the tenants have not done so. The landlord therefore issued a Notice to End Tenancy for Cause for repeated late payment of rent on March 15, 2012 and the landlord now seeks an Order of Possession.

Agent for the tenants questions the landlord's records but states he does not have evidence to show that the records are wrong or to prove that the tenants' rental payments have been made on time. Agent for the tenant states that he has legal arguments to show extenuating circumstances as to why the payments were late.

Agent for the tenants argues first that the tenants were the subject of an illegal rent increase and as a result of attempting to pay that increase they suffered from financial hardship. Agent for the tenants submits that the financial hardship and stress caused by the \$76.00 were contributing factors to the rent being late.

Further, agent for the tenants states that the tenants have paid their rent late since 2007 and that by accepting late rental payments and not enforcing their rights to end the tenancy the landlords have waived their right to have their rent paid on time. Agent for the tenant states that each time the tenants knew their rent would be late they would call the landlord to advise and the landlord would instruct them to deliver their cheque as soon as possible to the landlord's office rather than dropping it in the drop box. Agent for the tenants submits that the landlord has issued Notices to End Tenancy in the past but has failed to act on those notices even when the tenants failed to pay the rent within the required 5 days and the landlord was in a position to obtain an Order of Possession. Further, even though the landlord has written to the tenants to say that they intend to begin enforcing their right to collect the rent on the 1st of each month the landlord did not follow through. Agent for the tenants' submitted case law which he believes supports his position that now that the landlords have accepted late payments over and extended period of time that they are now estopped from enforcing their rights to have their rent paid on time. Further, that if the landlord is not estopped then the landlord must provide sufficient notice of their intention to begin enforcing their right.

Agent for the tenant notes that the landlord did write to the tenant's on December 28, 2011 advising that late rental payments would not be tolerated however this is not

sufficient notice to the tenants because the landlord began attempting to enforce its rights effective with the January 1, 2012 rent payment. Agent for the tenants states that reasonable notice is at least one month and that if this is to be considered notice the earliest time the landlord could start counting late payments of rent is as of March 1, 2012. Agent for the tenants admits that although March 1, 2012 was late the payment for April 1, 2012 was made early therefore the tenants are only late with two payments in 2012 (January's payment having been late as well). Agent for the tenant notes that 3 payments is considered "repeatedly late" in the policy guidelines but agent for the tenants also submits that that this is a rule not consistently applied by Dispute Resolution Officers.

Analysis

I disagree with tenants' agent's arguments. First, I find that the matter of the illegal rent increase to be irrelevant as the evidence shows that the tenants were late paying their rent prior to the illegal increase and they continued to be late paying their rent after the increase was removed.

I find that the tenants have failed to produce sufficient evidence to show that the landlord acquiesced to the late rental payments. I find that when the landlord served Notices to End Tenancy previously yet did not obtain an Order of Possession when in a position to do so, that the landlord was choosing to reinstate the tenancy as opposed to waiving their right to have their rent paid on time. With respect to this point, I am mindful of the landlord's testimony that she was giving consideration to the tenants' financial problems by not seeking an Orders of Possession in the past; however things have now gone too far. Instead of being grateful for this consideration, the tenants are now attempting to use the landlord's generosity against them arguing that the landlord is now estopped from ever being able to insist upon having the rent paid on time. Landlords should be allowed to offer tenants consideration when financial problems arise without fear of losing their right to have their rent paid on time entirely.

With respect to requiring notice that the landlord was about to begin enforcing their rights to have the rent paid on time, I find that such notice is not necessary. The tenants' agreed to pay their rent on time and, while I have found notice was not necessary, based on the numerous letters from the landlord to the tenants asking them to pay on time I find that the tenants have had notice in abundance.

In the end the evidence shows that the tenants have been late paying their rent 10 times in 2011 and 3 times in 2012. I find this to be more than sufficient cause for the landlord to wish to end this tenancy for repeated late payment of rent.

Conclusion

The landlord has requested an Order of Possession. As I have declined the tenants' application seeking to cancel the Notice to End Tenancy the landlord is therefore entitled to that Order. As the effective date on the Notice to End Tenancy has passed the landlord will be provided with an Order of Possession effective 2 days after service. This Order is a final and binding Order enforceable as any other Order of 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*.

Dated: April 11, 2012.

Residential Tenancy Branch