



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AAT, MNDC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated April 11, 2012, for an order allowing the Tenant or his guests access to the rental unit and for compensation for damage or loss under the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s claims for an order allowing the Tenant’s guests access to the rental unit and for compensation (related to that alleged denial) are unrelated to the Tenant’s application to cancel a One Month Notice to End Tenancy, the sole ground of which is repeated late payment of rent. Consequently, those parts of the Tenant’s application are dismissed on the terms set out in the Conclusions section of this Decision.

At the beginning of the hearing, the agent for the Landlord said she was not served with all of the Tenant’s documentary evidence which the Tenant denied. I find that this is of little consequence however given that the documents in question are also contained in the Landlord’s evidence package (and many of them are not relevant in any event). The Landlord’s agent said she also received evidence from the Tenant only 2 days prior to the hearing which the Tenant admitted. While I find that the Tenant did not serve his late evidence within the time limits required under the Rules of Procedure, I find that does not prejudice the Landlord and I find that it is admissible.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on September 1, 2009. Rent is \$900.00 per month payable in advance on the 1st day of each month. The Parties agree that (up to and including April 14, 2012) the Tenant paid rent each month by way of a pre-authorized debit of his bank account. The Landlord’s agent said the Tenant’s rent

payments for February, March and April 2012 did not go through on the 1st day of each of those months because there were insufficient funds. The Landlord's agent said the Tenant paid rent for those months by way of an Interac payment on February 6, 2012, March 6, 2012 and April 4, 2012, respectively. Consequently, the Landlord's agent said on April 11, 2012, the Tenant was served with a One Month Notice to End Tenancy for Cause dated April 11, 2012 when it was posted on his door. The sole ground alleged on the Notice was that the Tenant was repeatedly late paying rent. The Tenant admitted that he received the One Month Notice.

The Tenant agreed that his rent payments for February, March and April 2012 were returned for non-sufficient funds but he claimed he paid by Interac on February 3, 2012, March 2, 2012 and April 3, 2012 respectively. The Tenant argued that the Landlord condoned the late payments by accepting them (which the Landlord denied). The Tenant also argued that the Landlord had a duty to give him a Notice each time his rent was late but had not done so. The Tenant further argued that the real motive for the Landlord trying to end the tenancy was that the Landlord did not want him conducting meetings for an advocacy group in his rental unit.

Analysis

Section 47(1)(b) of the Act says that a Landlord can end a tenancy by giving a tenant a One Month Notice to End Tenancy for Cause if the tenant is repeatedly late paying rent. RTB Policy Guideline #38 says "three late payments are the minimum number to justify a Notice under these provisions."

I find that under the terms of the Parties' tenancy agreement, rent is due in advance on the 1st day of each month. I find that the Tenant was late paying rent for February, March and April 2012. Although the Tenant argued that the Landlord condoned the late payments by accepting them, this was denied by the Landlord's agent. I find that the Landlord's actions of serving the Tenant with the One Month Notice very shortly after the third late payment shows the Landlord did not condone the late payments. Furthermore, I find that there is no obligation on the Landlord either under the Act or the tenancy agreement to give the Tenant a notice each time that the Tenant is late paying rent.

The Tenant further argued that the Landlord's real motive for ending the tenancy was because they did not want him holding advocacy meetings in the rental unit. The Tenant argued that the Landlord received a letter from the Civil Liberties Association which it would have received on April 11, 2012, the same day the One Month Notice was served. The Landlord's agent denied this and claimed that according to the post mark the letter was only mailed on April 11, 2012 and she claimed she received it on April 16, 2012. While a Landlord's primary motives may be relevant when determining whether to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (see RTB Policy Guideline #2), I find that they are *irrelevant* considerations on an application to cancel a One Month Notice to End Tenancy for Cause.

The Tenant also argued that s. 46 of the Act said a tenant has 5 days from the day rent is due to pay their rent, however this is not correct. If a Tenant receives a 10 Day Notice to End Tenancy, then a tenant must pay the overdue rent within 5 days of receiving that notice. This provision does not extend the time to pay rent when it is due under the tenancy agreement. As indicated above, the relevant section of the Act in this matter is s. 47(1)(b) not section 46.

The Tenant further argued that if the Landlord did not do repairs in a timely manner or breach his right to quiet enjoyment then he should be able to pay rent late. However, s. 26(1) of the Act says *"a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement unless the tenant has a right under this Act to deduct all or a portion of the rent."*

For all of these reasons, I find that there are grounds to uphold the One Month Notice to End Tenancy for Cause dated April 11, 2012 and the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord's agent requested and I find that she is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect on May 31, 2012 (the effective date of the One Month Notice).

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated April 11, 2012 and for an order allowing the Tenant or the Tenant's guests access to the rental unit are dismissed without leave to reapply. The Tenant's application for compensation for damage or loss under the Act or tenancy agreement is dismissed with leave to reapply.

An Order of Possession to take effect at 1:00 p.m. on May 31, 2012 has been issued to the Landlord. A copy of the Order of Possession must be served on the Tenant and 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*.

Dated: May 02, 2012.

Residential Tenancy Branch