



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that one of the landlord's representatives handed the female tenant the 1 Month Notice on May 23, 2012. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package when it was hand delivered by the tenant on June 5, 2012. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession in the event that the tenants' application to cancel the 1 Month Notice were dismissed. At the hearing, the parties clarified the landlord's company name to the spelling outlined above. I amended the tenants' application to reflect the correct company name.

At the commencement of the hearing, the tenant asked for consideration of an adjournment as his travel plans had changed unexpectedly and he was calling from an airport waiting for a flight. Since further delay for an adjournment would adversely affect the landlord who is seeking an end to this tenancy by June 30, 2012, I denied the tenant's request for an adjournment. We were able to continue with the hearing without interruption, as the tenant's flight was not called.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on December 1, 2010. At the expiration of the initial term, this converted to a periodic tenancy. Monthly rent is currently set at \$1,200.00, payable in advance on the first of each month. The landlord

continues to hold the tenants' \$600.00 security deposit and \$600.00 pet damage deposit both paid on November 16, 2010.

The landlord did not submit any written evidence. The only written evidence received from the tenants, other than their application for dispute resolution, related to the service of documents and the tenants' availability for this hearing. Neither party entered into written evidence a copy of the 1 Month Notice. I agreed to allow the landlord to submit a copy of the 1 Month Notice by fax if it were received by 11:45 a.m. on the date of this hearing. The Residential Tenancy Branch (RTB) subsequently received the landlord's fax of the 1 Month Notice before 11:45 a.m. on June 29, 2012, as requested.

The parties agreed that the 1 Month Notice identified the following reason for seeking an end to this tenancy for cause:

Tenant is repeatedly late paying rent.

My review of the 1 Month Notice confirmed the landlord's claim that it incorrectly identified June 23, 2012 as the effective date for this Notice. In accordance with the Act, I correct this effective date to June 30, 2012.

Although the landlord did not have specific details regarding the tenants' late payment of rent, he claimed that this was an ongoing and persistent problem throughout this tenancy. He testified that he thought that the tenants had been late in paying their rent every month for the past six months. The tenant testified that the tenants have been late in paying their rent, perhaps three times in total, although he was not sure. He noted that their rent always got paid during the month it was due, but was not always paid on time. He said that the tenants were planning to vacate the rental unit, but needed an extra month to do so.

Analysis

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...

The landlord's failure to provide any written evidence or even any detailed sworn testimony weakens the landlord's application for an end to this tenancy for this cause. However, the tenant did not dispute the landlord's claim that the tenants have been late

in paying their rent every month for the past six months. Although the tenant too did not have specifics regarding the timing of the tenants' rent payments, the tenant testified that they were likely late in making their rent payments on three occasions. Based on the oral testimony of the parties and on a balance of probabilities, I find that the tenants have been late in paying their rent on at least three occasions, leading to the landlord's issuance of the 1 Month Notice. I dismiss the tenants' application to cancel the landlord's 1 Month Notice on the basis of the tenants' repeated late payment of rent.

Section 55(1) of the *Act* reads as follows:

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.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. Since I have dismissed the tenants' application to cancel the landlord's 1 Month Notice, I allow the landlord's oral request for an Order of Possession.

Conclusion

I dismiss the tenants' application to cancel the landlord's 1 Month Notice with the effect that this tenancy ends on June 30, 2012, the corrected effective date on the landlord's 1 Month Notice. As the parties will not have received this decision by that date, I provide the landlord with a formal copy of an Order of Possession to take effect within 7 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an 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: June 29, 2012

Residential Tenancy Branch