



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants have applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the parties confirmed that only a 1 Month Notice to End Tenancy for Cause had been issued; there was no need to dispute a 10 Day Notice to End Tenancy.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on June 17, 2012, be cancelled?

Background and Evidence

The tenancy commenced on September 15 2010, rent is \$1,500.00 due on the first day of each month. A deposit in the sum of \$500.00 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord and the tenants agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants are required to vacate the rental unit on July 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- been repeatedly late paying her rent;
- allowed an unreasonable number of occupants in the unit;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and

- engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

The landlord provided copies of receipts issued for rent payments, some of which included:

July 2012	On time
May 2012	On time
April 2012	<ul style="list-style-type: none"> • 1,300.00 on April 1; • 200.00 on April 5
March 2012	<ul style="list-style-type: none"> • 1,440.00 on April 1; • 200.00 on April 5
February 2012	Paid on February 6
January 2012	<ul style="list-style-type: none"> • 1,300.00 on January 1; • 200.00 on February 1
December 2011	Paid early
November 2011	<ul style="list-style-type: none"> • 1,390.00 on November 1; • 2011; 100.00
October 2011	<ul style="list-style-type: none"> • 1,450.00 on October 1; • 50.00 late, no receipt issued
September 2011	Paid early
August 2011	<ul style="list-style-type: none"> • 1,200.00 on August 1; • 300.00 on August 30

The landlord supplied copies of receipts dating back to September 2010 that indicated the tenants have made late payments on eleven months out of twenty-two. The landlord repeatedly told the tenants that rent must be paid on the first day of each month but that they always had an excuse.

On January 2, 2011, the landlord issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent, as rent had not been paid on time. The rent was paid within 5 days and the tenancy continued. A copy of the Notice was supplied as evidence of the landlord's attempts to make the tenants pay rent on time.

The landlord believes that 5 adults and 3 children are living in the 960 sq. foot, 3 bedroom unit. The landlord submitted this is an unreasonable number of occupants for the home.

The landlord made submissions alleging the tenants are smoking marijuana in the unit; the landlord lives in 1 of the other 2 units in the home. The landlord is a peace officer and believes his lawful rights are being threatened by the use of an illegal drug on his property.

The tenants responded that they had permission in December 2011 to make a partial payment as they needed money for Christmas. The tenants were also late making payments as they were spending money on replacement of items required as the result of the landlord's failure to complete repairs. The tenants did not dispute the receipts that were submitted by the landlord as evidence.

The tenants said that 3 adults and 3 children live in the unit, but that they have guests coming and going from the unit.

The tenants denied smoking marijuana in the home but did confirm that the tenant's father will smoke marijuana in the yard, as he has a licence to use the drug.

During the hearing the landlord requested an Order of possession.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have been repeatedly late paying rent.

Residential Tenancy Branch policy suggests that 3 late payments are the minimum number sufficient to justify a Notice ending tenancy. The late payments do not need to be consecutive; they only must be considered as repeatedly late. A landlord who does not act in a timely manner after the most recent late payment could be determined to have waived the reliance on this provision of the Act. I find this to be a reasonable stance.

Even though the tenants have made payments on time for the last 3 months they have made multiple late payments during the term of this tenancy. The landlord took the step of issuing a 10 Day Notice to End Tenancy for unpaid Rent in January 2011, as a message to the tenants that he could not tolerate late rent payments. The tenants continued to make multiple late payments, despite having signed a tenancy agreement that requires full payment on the first day of each month.

It is difficult to accept the tenant's submission that they had spent money on costs related to the landlord's failure to make repairs. Rent is due unless emergency repairs have been made by the tenants, in accordance with section 33 of the Act, or the tenants have been given an Order, allowing rent reductions. There was no evidence of either before me and I have concluded that the tenants have a pattern of making repeated late rent payments. Therefore, this reason on the Notice is valid and I find that the Notice ending tenancy is of full force and effect.

Section 55(1) of the Act provides:

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*

Therefore, as the tenant's application is dismissed and the landlord requested an Order of possession, I find that the landlord is entitled to an Order of possession that is effective 2 days after service to the tenants.

In relation to the balance of the reasons on the notice, I find that the landlord has failed to prove that the tenants have breached any law that places the landlord at risk. There was

no evidence that the tenants are smoking marijuana on the property, although their family member may have a licence to use marijuana.

I find that the landlord has failed to prove that an unreasonable number of people live in the unit. The tenants have friends coming and going from the home and the landlord has failed to prove, on the balance of probabilities, that there are 5 adults living in the unit.

Conclusion

As I have determined that the landlord has proven the tenants have made repeated late rent payments I find that the landlord has grounds to end this tenancy pursuant to section 47 of the Act.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 31, 2012.

Residential Tenancy Branch