



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, requesting an order to cancel a Notice to End Tenancy for unpaid rent and to recover their filing fee for the Application. The Tenant had also indicated on his Application that he applied for other relief, however, he was unable to explain what other relief he sought.

Both parties appeared for the hearing by teleconference call, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

I note the Landlord had issued the Tenant a one month Notice to End Tenancy for repeated late payment of rent. Although the Tenant applied to cancel a notice for unpaid rent, it was clear in the details of the Application that he was seeking to cancel the one month Notice to End Tenancy for repeated late payment of rent. Therefore, this hearing proceeded on the issues regarding the one month Notice to End Tenancy.

The Tenant did not serve his evidence on the Landlord or the Branch until the day before the hearing. It was explained to the Tenant in the hearing documents he was provided when he filed his Application, and during the hearing, that evidence must be served on the other party and the Branch five business days before the hearing, pursuant to the rules of procedure. I find the Tenant failed to provide his evidence in accordance with the rules of procedure and therefore, I have not allowed this evidence in.

Issues(s) to be Decided

Should the one month Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began in June of 2007. The parties entered into a written tenancy agreement. The rent agreed to at the outset was \$280.00 per month, payable on the first day of the month.

On July 6, 2012, the Landlord issued the Tenant a one month Notice to End Tenancy, with an effective end of tenancy date of August 31, 2012, for repeated late payment of rent (the "Notice").

An Agent for the Landlord testified that in the past 48 months the Tenant has been late paying rent 36 times.

The Agent testified that the Tenant has, on occasion, got behind in rent and then made a lump payment and got caught up. The largest such instance of this was in March of 2012, when the Tenant owed the Landlord rent of \$1,606.00

The Landlord issued 10 day Notices to End Tenancy on October 7, 2011, November 10, 2011, January 4, 2012, February 3, 2012, March 6, 2012, June 4, 2012, and July 4, 2012.

The Tenant does not deny being late paying rent on these occasions. The Tenant testified that his problems began in 2007 when he was sick and missed 100 days of work. He testified he gave his medical evidence of the illnesses to his employer and had no copies.

The Tenant explained he also suffered from an eye infection in October of 2011, and missed work then as well.

The Tenant also testified his hours of work had been cut back.

The Tenant further testified that he was late paying rent in July as he had to pay a large power bill or the power would have been cut off to his home.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant has been repeatedly late paying rent, and has been late at least seven months out of the last ten months of the tenancy.

Policy guideline 38 states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that 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.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

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.

I find that the late payments are not sufficiently far apart to conclude the Tenant is not repeatedly late paying rent. I find there has been a consistent pattern of the Tenant paying rent late over the course of the tenancy, and in particular, over the past 10 months. I also find the Tenant had insufficient evidence to prove these instances were caused by outside forces, beyond his control.

I find that the Notice is valid and should not be cancelled. Therefore, I dismiss the Tenant’s Application for Dispute Resolution.

Following my dismissal of the Tenant’s Application during the hearing, the Agent for the Landlord orally requested an order of possession in favour of the Landlord. Under section 48 of the Act, I must grant that request and I grant an order of possession for the site effective at **1:00 p.m. August 31, 2012**, the effective date of the Notice.

Conclusion and Orders

The Tenant has been repeatedly late paying rent and the one month Notice to End Tenancy is found to be valid. The Tenant's Application is dismissed.

The Landlord is entitled to an Order of Possession, **effective at 1:00 p.m. August 31, 2012**. This order may be enforced in the Supreme Court of British Columbia.

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 *Manufactured Home Park Tenancy Act*.

Dated: August 09, 2012.

Residential Tenancy Branch