



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") and an order requiring the landlord to make repairs.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue #1: The tenant's agent appeared on behalf of the tenant. The agent presented that the tenant was too ill to attend the telephone conference call hearing; however there were no submissions substantiating the illness, other than that the tenant had an anxiety attack and no requests prior to the hearing for an adjournment.

I declined the agent's request for an adjournment.

Preliminary Issue #2: I have determined that the portion of the tenant's application dealing with a request for an order requiring the landlord to make repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for that order, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

This tenancy began on July 1, 2009, current monthly rent is \$629.00 and the tenant paid a security deposit of \$298.00 at the beginning of the tenancy and a pet damage deposit in instalments, totalling the amount of \$298.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated July 25, 2012, was delivered via personal delivery on that date, listing an effective end of tenancy on August 31, 2012.

The cause as stated on the Notice alleged that the tenant is repeatedly late in paying rent.

In support of their Notice, the landlord testified the tenant has made at least 4 late payments of rent since October 2011, those being in October and December 2011 and April and July 2012. Additionally there were six other late payments earlier in the tenancy.

The landlord said that the tenant was issued warning letters and 10 Day Notice to End Tenancy for Unpaid Rent each of the times the rent was late, but that the problem persisted.

The landlord's relevant evidence included all relevant receipts showing the late payments mentioned, as well as all late payments throughout the tenancy, the breach letters issued to the tenant, and 10 Day Notices issued to the tenant.

In response, the tenant's agent could not dispute the landlord's testimony, but stated that the tenant had disability and health issues which impacted the tenant's ability to fully comply with the tenancy requirements.

Analysis

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

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late in paying rent.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

Section 47 of the Residential Tenancy Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions.

I find the landlord established, through testimony and evidence that the tenant has made four late payments of rent since October 2011 and for at least six additional months since the beginning of the tenancy. The latest late payment resulted in the landlord's 1 Month Notice to End Tenancy.

Conclusion

I therefore find the landlord submitted sufficient evidence to establish that the tenant was repeatedly late in paying rent. As I have found that the landlord has proven the cause listed on the Notice, I dismiss the tenant's application to cancel the Notice, without leave to reapply.

As I have dismissed the tenant's application, I grant the landlord's verbal request for an Order of Possession.

The order of possession for the rental unit is effective at 1:00 p.m. on August 31, 2012, the effective date of the Notice.

This final, legally binding order of possession is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement.

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: August 22, 2012.

Residential Tenancy Branch