



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF / CNC

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony.

While I note that a box ticked on the landlord's application form reflects a request for an order of possession on the basis of unpaid rent (OPR), within the context of the broader application it is clear that the landlord seeks an order of possession arising from a claim of cause (OPC), which includes alleged repeated late payment of rent.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 9, 1995. Currently, the monthly rent is \$693.00, and it is due and payable in advance on the first day of each month. A security deposit of \$257.50 was collected at the start of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated July 31, 2012. The notice was served in-person on the tenant on that same date. On August 2, 2012, the tenant filed an application to dispute the notice. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is August 31, 2012. The reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Subsequently, on August 17, 2012 the landlord filed his own application for dispute resolution.

The parties do not dispute that rent remains unpaid as follows:

\$3,050.00 (5 x \$610.00): June, July, August, September & October 2008.

\$300.00: payment made by tenant on December 4, 2011

\$2,750.00: balance of unpaid rent still owed (\$3,050.00 - \$300.00)

Adding interest on the unpaid rent leads the landlord to calculation of a total amount owing of approximately \$3,414.11. While there have been exchanges between the parties around proposed instalment payments to discharge the debt, such payment is limited to the one referenced above.

With the exception of the above arrears, there is no dispute that the tenant's rent has been paid in full and in a timely manner throughout the tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline # 38 speaks to “Repeated Late Payment of Rent,” and provides in part:

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

Whether the landlord was inconvenienced or suffered damage as a result of any of the late payments is not a relevant factor in the operation of this provision.

Pertinent to the landlord’s delay in filing an application for dispute resolution concerning late payment of rent which occurred approximately 4 years ago, Black’s Law Dictionary (“Black’s”) provides that the “Doctrine of laches”

is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Black’s also defines “estoppel by laches” as a “neglect to do something which one should do, or to seek to enforce a right at a proper time.”

Further, Black’s defines “estoppel” to mean “that a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly.”

Following from the above, in short, I find that the relatively long delay on the part of the landlord to enforce a right to collect the rent in a timely manner, precludes me from issuing an order of possession. The landlord’s application for an order of possession is, therefore, hereby dismissed.

However, as for the monetary order, based on the documentary evidence and testimony of the parties, I find that the landlord has established entitlement to a claim of \$2,800.00; this is comprised of \$2,750.00 in unpaid rent as detailed above, in addition to the \$50.00 filing fee. As the legislation provides no authority for a landlord to assess interest on unpaid rent, the landlord’s calculation of additional debt in that regard is hereby dismissed.

As to the disposition of the security deposit, the end of tenancy does not presently appear imminent and, accordingly, the landlord's application to retain the security deposit is hereby dismissed with leave to reapply. As such time as the tenancy does end, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit.**

Conclusion

The landlord's application for an order of possession is hereby dismissed, with the result that the tenancy continues in full force and effect.

The landlord's application to retain the security deposit is hereby dismissed with leave to reapply.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,800.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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 30, 2012.

Residential Tenancy Branch