



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by placing it in the Landlord's drop box on the door of the Landlord's office on December 12, 2012. The Landlord confirmed receiving the Tenant's hearing package. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on December 15, 2011 as a fixed term tenancy with an expiry date of December 31, 2012 and is now continuing on a month to month basis. Rent was \$815.00 until January 1, 2013 and is now \$835.00 per month payable in advance of the 1st day of each month. The Tenant paid a security and pet deposit of \$407.50 on December 12, 2011.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated November 26, 2012. The Landlord said she served the Notice on November 26, 2012 by posting it on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice was December 31, 2012. The Landlord continued to say the Tenant is living in the unit and the Landlord said the Company wants to end the tenancy.

The Landlord continued to say the Tenant has been late with five months of rent for the months of September, October, November and December, 2012 and for January, 2013. The Landlord said the Tenant has unpaid rent of \$815.00 for December, 2012 and \$835.00 of unpaid rent for January, 2013. The Landlord said the late rent payments are the reason that the Company instructed her to issue the 1 Month Notice to End

Tenancy for Cause. The Landlord requested an Order of Possession for as soon as possible.

The Tenant said her former roommate moved out of the rental unit in September, 2012 and as a result she has been having difficulty paying the rent. The Tenant said September's rent would have been on time, but the Landlord returned the other tenants cheque when he moved out. As well the Tenant said she thought she had an agreement with the Landlord for late payment of the October, 2012 rent. The Tenant said it is difficult to live in the City with only a disability pension. The Tenant continued to say she agrees that she was late with the November, 2012 rent payment and the December, 2012 rent payment and January, 2013 rent payment are unpaid as of today. The Tenant offered the Landlord to make payment over time on the unpaid rent and she said she would like to continue the tenancy.

The Landlord decline the Tenant's offer to make payments over time and the Landlord said they want to end the tenancy for repeatedly late rent payments.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline #38 says the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying the rent and three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenant has not paid the overdue rent for December, 2012 and for January, 2013 and the Tenant has been repeatedly late with at least 3 rent payments. The Tenant does not have the right to withhold a part or all of the unpaid rent and it is the Tenant's responsibility to pay the rent when it is due. The Tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated November 26, 2012, is dismissed without leave to reapply. Consequently, pursuant to section 55 (1)(a) of the Act, I find for the Landlord and award the Landlord an Order of Possession to take effect 48 hours after service of it on the Tenant and other occupants.

I also find that the Landlord may be entitled to recover unpaid rent and the Landlord is at leave to apply for monetary compensation, but it is not part of this application.

Conclusion

The Tenant application to Cancel the Notice to End Tenancy is dismissed without leave to reapply.

Pursuant to section 55 of the Act the Landlord requested and has been successful in receiving an Order of Possession effective 2 days after service of it on the Tenant. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in 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: January 15, 2013

Residential Tenancy Branch

