



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, PSF, LRE

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for a monetary order for compensation and for various remedies. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

The tenant filed a large amount of handwritten evidence. A faxed copy of the tenant's evidence was placed on the file. Due to the font and spacing of the tenant's handwriting, a lot of the evidence was illegible. In addition portions that were highlighted by the tenant were blacked out on the faxed copy.

Since I was unable to read the tenant's evidence that was mostly to do with her claim for compensation, I have dismissed this portion of her application with leave to reapply. However, I was able to hear the portion of the application to do with cancelling the notice to end tenancy and therefore this hearing only dealt with this portion of the tenant's application.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on May 01, 2009. The rent is \$750.00 due on the first of the month. The rental unit is located in the basement of the home – the landlord lives upstairs.

On September 30, 2012, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reasons;

- Tenant is repeatedly late paying rent

The tenant filed copies of rent receipts into evidence. Upon reviewing the receipts for the year 2012, I find that rents for January, June, July, August and September were paid after the first of the month.

The tenant stated that she always has the rent available on time, but the landlord is never home to accept it. She also stated that the landlord avoids her intentionally, which causes her to pay rent late.

The tenant also filed a copy of a ten day notice to end tenancy for nonpayment of rent in the amount of \$750.00. The notice is dated May 05, 2012 was served for rent not paid on May 01, 2012.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies. Based on the testimony of both parties and the documentary evidence filed by the tenant, I find that the tenant was repeatedly late paying rent. The tenant paid rent late at least five times in the current year.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Since January 2012, the tenant was late paying rent at least five times. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before **1:00 p.m. on February 01, 2013.**

The balance of the tenant's application is dismissed with leave to reapply.

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: November 14, 2012.

Residential Tenancy Branch

