



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC / OPC

Introduction

This hearing was scheduled in response to an application by the tenant for cancellation of a 1 month notice to end tenancy for cause. Both parties attended and / or were represented and gave affirmed testimony.

During the hearing the landlord's agent confirmed that the landlord seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

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

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began September 1, 1998. Monthly rent is due and payable in advance on the first day of each month. Currently, the monthly rent is \$979.00. A security deposit of \$425.00 was collected at the start of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated April 15, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 31, 2013. The only reason identified on the notice in support of its issuance is as follows:

Tenant is repeatedly late paying rent

The tenant filed an application to dispute the notice on April 19, 2013.

Documentary evidence submitted by the landlord includes a ledger which indicates that “in the last 16 months the tenant’s rent has been late 13 times.”

While the tenant does not dispute the recurring late payment of rent, she claims that the landlord appears to be using this as a means to end the tenancy for reasons more directly related to “harassment from neighbours.” In any event, the tenant also testified that she has found alternate accommodation and that she plans to vacate the unit by not later than May 31, 2013.

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 speaks to **Landlord’s notice: cause**, and provides in part:

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;

Further, Residential Tenancy Policy Guideline # 38 addresses “Repeated Late Payment of Rent,” in part:

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.

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

Based on the documentary evidence and testimony of the parties, I find that the number of occasions on which the tenant has paid rent late, is sufficient to trigger the provisions set out in section 47 of the Act, as above.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all the above, the tenant's application is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Friday, May 31, 2013**. This order must be served on the tenant. 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.

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: May 17, 2013

Residential Tenancy Branch

