



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC / FF
CNC

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for cause / and recovery of the filing fee; and ii) by the tenant for cancellation of a 1 month notice to end tenancy for cause.

Both parties attended and / or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to 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 April 1, 2009. Monthly rent is due and payable in advance on the last day of each month. Presently, the monthly rent is \$1,783.53. A security deposit of \$725.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated April 25, 2013. The notice was served by way of posting on the tenant's door on that same date. 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 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 May 2, 2013.

During the hearing the parties drew attention to a previous decision issued in a dispute between these parties by date of May 11, 2012 (file # 790594). In part, the decision reads as follows:

On the issue of repeated late payment of rent, despite the due date of the last day of each month in the tenancy agreement I find that by his practice the landlord had allowed rent to be paid, for the most part, at anytime during the first week of each month throughout the entire tenancy.

As the tenant disputes that the landlord ever raised this matter as an issue that needed to be corrected and the landlord has failed to provide any documentary or corroborating evidence that the tenant was informed of the landlord's change in practice to have rent paid by the due date, I find the landlord cannot now rely on this provision to end the tenancy.

Residential Tenancy Policy Guideline 38 states 3 late payments are the minimum number sufficient to justify a notice under these provisions. Despite my finding above, I note that the tenant should now consider himself sufficiently warned the landlord will no longer accept any late payments of rent.

As the tenant has already paid rent late for the month of May 2012, the landlord may consider this late payment of rent as the first one to contribute [to] the late payment count and may consider ending the tenancy if the tenant makes 2 more late payments.

The tenant takes the position that his circumstances do not permit him to consistently pay the rent on time, and there is no dispute between the parties that rent has not been paid when due for the months of January, February, March and May 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 6 of the Act speaks to **Enforcing rights and obligations of landlords and tenants**, in part as follows:

6(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part as follows:

26(1) 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.

Section 47 of the Act addresses **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;

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," and provides 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.

Based on the documentary evidence and testimony, I find that the tenant's payment of rent has been late on 4 occasions within the past 5 months. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As earlier noted, the date shown on the 1 month notice by when the tenant must vacate the unit is May 31, 2013. In view of the various challenges associated with finding alternate accommodation within such a short period of time, the landlord has requested that an order of possession be issued which is effective two (2) days after service on the tenant. In short, the landlord is prepared to serve the notice toward the end of June 2013, thereby permitting tenancy to continue until June 30, 2013, but only on the condition that the tenant pays June's rent on time. During the hearing the tenant confirmed that he intends to pay June's rent on time. Pursuant to the tenancy agreement, rent for June 2013 is due and payable in advance on May 31, 2013.

Finally, I order that the landlord withhold **\$50.00** from the tenant's security deposit at the end of tenancy in order to recover the filing fee.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. 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.

I order that the landlord may recover the **\$50.00** filing fee by way of withholding this amount from the tenant's security deposit at the end of tenancy.

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 29, 2013

Residential Tenancy Branch