



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPC

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy for cause. The landlord applied for an order for possession.

Issue(s) to be Decided

Should the Notice to End Tenancy dated May 2, 2013 be cancelled?
Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is a suite in the landlord's house in Vancouver. The tenancy began in October, 2012. Monthly rent is \$750.00 payable on the first of each month. On May 2, 2013 the landlord's agent served the tenant with a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause. According to the landlord, May rent was paid within five days and the 10 day Notice to End Tenancy was thereby cancelled, but the landlord is seeking an order for possession pursuant to the one month Notice to End Tenancy on the basis that the tenant has been repeatedly late paying rent. The landlord and his agent testified that the tenant has been late paying rent since the tenancy began on October. The landlord said the rent was paid on October 4, 2012, in November on the 6th, in December, on the 2nd, in January in two instalments, \$600.00 on January 3rd and \$150.00 on January 7th; in February on the 6th, in March, in two instalments, \$350.00 on the 2nd and \$400.00 on March 7th. The landlord said April rent was paid on April 8th and May rent was paid on the 5th.

The tenant disputed the landlord's testimony. He said that the rent was always paid on time. He testified that the landlord issued fraudulent receipts and he testified that the landlord wanted to evict him to allow a family member to move into the rental unit and that the landlord wanted to do so without having to pay him one month's rent as would

be required if the landlord gave him a two month Notice to End Tenancy for landlord's use. The tenant submitted a photocopy of a receipt given by the landlord dated December 1, 2012 that recorded a \$750.00 rent payment. He said that the landlord produced new false receipts after the fact to record late payments as a manufactured ground to evict him. He submitted a photocopy of a letter said to be from a clerk at a money mart store attesting to the fact that the landlord refused to accept his payment of rent by money order and insisted on May 6, 2013 that the tenant go to the money mart store and cash the money order. The tenant said the landlord refused to accept his rent payment by money order to establish a ground for his eviction.

The landlord's agent testified at the hearing that that he was retained to act for the landlord in March and at that time provided the landlord with a form of receipt to give to the tenant for future rent payments. The evidence submitted shows that the landlord attempted to document previous late payments by issuing new receipts for past payments by preparing receipts dating back to the start of the tenancy using the form provided by his agent.

Analysis and conclusion

The receipts given by the landlord to record payments made before March were created after the fact and as such they are not entirely reliable, but, I find that the receipts for payments made in March and later months are reliable and were given by the landlord in response to payments made on the dates stated in the receipts. Based on the Landlord's evidence that the tenant paid rent for January in two instalments on January 3rd and January 7th, I find that the tenant was late in paying January rent. Similarly in March the tenant paid rent in two instalments and I find that March rent was paid late. I accept the landlord's testimony that rent for April was not paid until April 8th. In view of the disputed evidence about payment of May rent by money order, I make no finding concerning whether or not May rent was paid on time. Apart from a December receipt, the tenant did not submit any documents to support his testimony that rent was always paid on time. I did not find the tenant's testimony as to timely payments to be convincing and given the receipts and Notices for unpaid rent given to the tenant, I prefer the landlord's testimony as to payments.

The Residential Tenancy Act provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

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

The *Act* does not define what constitutes “repeatedly late”. The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. I have found that the tenant was late in paying rent in January, March and in April; these are not widely separated occurrences and I find that the evidence does establish that the tenant has been repeatedly late in paying rent. The tenant’s application to cancel the one month Notice to End Tenancy is dismissed without leave to reapply and I find that the landlord is entitled to an order for possession effective June 30, 2013 after service on the tenant. This order may be filed in the Supreme 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: June 07, 2013

Residential Tenancy Branch

