



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 686905 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 1, 1997. Rent of \$810.00 is payable monthly on or before the first day of each month. On May 24, 2013, the Landlord served the Tenant with a Notice to End Tenancy for Cause (the “Notice”). The Notice lists the reason for the Notice as repeated late payment of rent and has an effective date of June 30, 2013.

The Landlord states that the Tenant has been repeatedly late paying rent and provided accounting records that show the dates of the Tenant’s payments each month. The Tenant does not dispute late payments but argues that rent has been paid in full each

month and that by repeatedly accepting late payments over the sixteen years of the tenancy, the Landlord has waived the requirement of the tenancy agreement for payment on the first day of the month. Further, the Tenant argues that he was shocked when he received the notice to end tenancy and that the Landlord never warned the Tenant that they would seek a termination of the tenancy if the Tenant did not pay the rent on time.

The Landlord states that they only took over the management of the unit in 2008 and that they have no records to indicate that the payment date for rent was waived prior to this date. The Landlord states that have not waived the right to receive payment on the first day of the month, that the Landlord called the Tenant each month that the Tenant was late to obtain the rent and that the Landlord informed the Tenant, in a letter dated October 22, 2013 that the Tenant was expected to start paying rent on time. The Landlord states that late rent payments were accepted out of leniency and in recognition that the Tenant was having financial difficulties for a period of time but that the late payments have become later and now nearly at the end of each month.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Contract law provides that, as a general rule, performance of a contract term is due without request however where non performance can be cured a duty to warn of termination of the contract may be warranted. This may be particularly true where the termination results in harsh circumstances. In this case, given the length of the tenancy and accepting that virtually throughout the tenancy the rent has been paid late each month, it does not seem reasonable that the Landlord should let so much time elapse and then terminate the tenancy without warning. Although the Landlord sent a letter to

the Tenant in October 2013, I find that this letter is more of a reminder than a warning. Without determining whether the Landlord has acted to waive its right to rent payments on the first of each month, given the significant length of time that the Landlord has accepted late payments and considering that ending such a long term tenancy is a significantly harsh act where rents have been paid, albeit late, I find that in this context the Landlord has a duty to warn the Tenant that they would be seeking a termination of the tenancy agreement should the Tenant continue to make late rent payments. As no such warning was given, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues. As the Tenant has been successful with its application, I find that the Tenant is entitled to recovery of its \$50.00 filing fee and I order the Tenant to deduct \$50.00 from the July 2013 rent.

Conclusion

The Notice is not valid and is cancelled.

I order the Tenant to deduct \$50.00 from rent payable for July 2013 in full satisfaction of the claim.

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 27, 2013

Residential Tenancy Branch

