



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Should the one month Notice to End Tenancy dated August 1, 2013 be cancelled?

Background and Evidence

The rental unit is a suite in the landlord's house in Kelowna. According to the written tenancy agreement the tenancy began on October 1, 2012 although the tenant moved in and commenced paying rent as of September 15, 2012.

The landlord testified that the tenant has paid rent late on four occasions. The first occurrence was in November, 2012. The landlord sent a letter to the tenant dated November 5, 2012 reminding him of his obligation to pay the rent on the first of each month. The landlord testified that the rent was paid late in January and the landlord served the tenant with a 10 day Notice to End Tenancy for late payment of rent. The tenant paid the rent within five days of receiving the Notice to End Tenancy and it was thereby cancelled. The rent was late in April and again in August; on each occasion the landlord served a 10 day Notice to End Tenancy and the tenant paid the rent within five days of receiving the Notices. The landlord testified that when he served the tenant with a 10 day Notice to End Tenancy on August 2, 2013, he also served the tenant with the one month Notice to End Tenancy for repeated late payment of rent by posting it to the door of the rental unit. The Notice to End Tenancy was dated August 1, 2013 although it was not served on that date. Pursuant to section 90 (c) of the *Residential Tenancy Act*, a Notice to End Tenancy served by attaching a copy to the door of the rental unit is deemed to have been received on the third day after it is attached. The effective date of

service of the Notice to End Tenancy was August 5, 2013. The tenant filed an application to dispute the Notice to End Tenancy on August 12, 2013.

The landlord testified that the tenant paid rent for August after he received the 10 day Notice to End Tenancy, but as of the date of the hearing he has not paid rent for September.. The tenant testified that he dropped of an envelope at the landlord's office. He said the envelope contained a cash payment in the amount of September's rent. The landlord testified that no such payment was made.

During the hearing the tenant acknowledged that he had received a letter and three Notices to End Tenancy for late rent payments

Analysis

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. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. The tenant has not

provided evidence that there were exceptional circumstances that caused him to be late paying rent. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application. The landlord has requested that I issue an order for possession.

The one month Notice to End Tenancy purports to end the tenancy effective August 31, 2013, but section 47 (2) of the Act provides that a notice under section 47 must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and on the day before the date in the month that rent is payable under the tenancy agreement. Pursuant to these provisions, the earliest date that the Notice to End Tenancy can be effective is September 30, 2013. Section 53 of the *Residential Tenancy Act* provides that the effective date of a Notice to End Tenancy will be automatically corrected by deeming the effective date to be the earliest date that the Notice can be effective under the applicable section of the *Act*.

The matter of whether or not rent was paid for September is not before me on this application and I make no finding concerning the September rent payment.

Conclusion

Applying the quoted provisions, I find that the landlord is entitled to an order for possession effective September 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: September 20, 2013

Residential Tenancy Branch

