



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT CNC OLC

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause, for more time to make an application to cancel a Notice to End Tenancy, and for an order directing the landlord to comply with the *Act*.

The tenant and the landlord, and a witness for the landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The landlord confirmed that she did not serve evidence in response to the tenant’s application. The landlord confirmed that she received the tenant’s evidence and that she had the opportunity to review the tenant’s evidence prior to the hearing. I find the landlord was sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

During the hearing, both parties repeatedly interrupted the Arbitrator despite being advised at the outset of the hearing not to interrupt the other party, or the Arbitrator during the proceeding. As a result, both parties were cautioned for interrupting the Arbitrator during the hearing.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Did the tenant apply to dispute the 1 Month Notice to End Tenancy for Cause in accordance with the *Act*, and if not, has the tenant provided sufficient evidence to

support an extension of time to make an application to cancel a Notice to End Tenancy?

- If the tenancy is ordered to continue, has the tenant provided sufficient evidence that the landlord should be directed to comply with the *Act*?

Background and Evidence

The parties agreed that the most recent tenancy agreement between the parties began on January 1, 2011, which was a fixed term tenancy that reverted to a month to month tenancy after December 31, 2012. The parties referred orally to a previous decision where it was determined that monthly rent was \$775.00 and was due on the 15th day of each month.

The tenant confirmed that she received a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated November 4, 2013 alleging three causes including the repeated late payment of rent, tenant has not done required repairs of damage to the unit/site, and breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. The tenant disputed the 1 Month Notice on November 18, 2013. The effective vacancy date indicated on the 1 Month Notice is listed as December 15, 2013. The tenant received both pages of the 1 Month Notice as both pages were submitted in evidence by the tenant.

During the hearing, the landlord testified that the tenant did not pay June 2013 rent until August 2013, which the tenant confirmed. The landlord then stated that the tenant did not pay July 2013 rent until September 4, 2013, which the tenant did not dispute. Finally, the tenant confirmed during the hearing that she did not pay rent on October 15, 2013 when it was due. During the hearing, the landlord stated that since November 2013 the tenant has not paid rent and made a verbal request for an order of possession.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant request for more time to make an application to dispute the 1 Month Notice – I find that this portion of the tenant’s application is moot, as the landlord did not dispute that the tenant received the 1 Month Notice on November 8, 2013 and applied to dispute the 1 Month Notice on November 18, 2013, which is within the 10 days permitted under section 47 of the *Act*. Therefore, I find the tenant did apply to dispute the 1 Month Notice in accordance with the timeline as defined in section 47 of the *Act*.

Once the tenant disputed the notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid.

Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of the tenant's testimony described above, **I find** that the tenant paid her rent late on three occasions as described above, comprised of late June 2013 rent, late July 2013 rent and late October 2013 rent. Therefore, **I dismiss** the tenant's application to cancel the 1 Month Notice and **I uphold** the landlord's 1 Month Notice dated November 4, 2013 with an effective vacancy date of December 15, 2013. Section 55 of the *Act* states:

Order of possession for the landlord

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.**

[emphasis added]

As the landlord requested an order of possession during the hearing and the tenant continues to occupy the rental unit, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days after service on the tenant** as the effective vacancy date of the 1 Month Notice has already passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the tenant's application to cancel the 1 Month Notice was dismissed and the 1 Month Notice was upheld, **I find** it is not necessary to consider the second and third causes listed in the 1 Month Notice. Furthermore, **I find** it is not necessary to consider the tenant's request for an order directing the landlord to comply with the *Act*, as the effective vacancy date of the 1 Month Notice has passed and an order of possession has been granted to the landlord.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 14, 2014

Residential Tenancy Branch

