



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, OPL, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution under the *Residential Tenancy Act* (the “Act”).

The Tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent, and to cancel a one month Notice to End Tenancy issued for repeated late payment of rent and to recover the filing fee for the Application. The Tenant also applied for an order for the Landlord to comply with the Act, as the Landlord had put the incorrect effective date on the one month Notice to End Tenancy. It was explained to the parties at the outset of the hearing that the incorrect effective date on the Notice automatically corrects under the Act.

The Landlord applied for an order ending the tenancy based on the one month Notice to End Tenancy and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The Tenant had paid all the rent due within five days of receiving the 10 day Notice to End Tenancy and therefore, the 10 day Notice to End Tenancy was voided by payment.

Issues(s) to be Decided

Should the one month Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began on August 1, 2013, with the parties entering into a written tenancy agreement. The rent agreed to was \$2,400.00 per month, payable on the first day of the month. A term of the tenancy agreement required the Tenant to pay the rent on time. The Tenant paid the Landlord a security deposit of \$1,200.00 on or about July 28, 2013, according to the tenancy agreement.

On January 7, 2014, the Landlord issued the Tenant a one month Notice to End Tenancy, with an effective end of tenancy date of February 7, 2014, for repeated late payment of rent (the "Notice"). The Tenant applied to cancel this Notice.

In evidence both parties submitted copies of documents related to the payment of rent, including receipts for rent paid.

The Landlord testified that the rent had been late in September 2013, by one day. The Landlord further testified that in November the rent was paid on the third day of the month; in December the rent was paid on the fifth day of the month; in January of 2014 the rent was partially paid on the third day of the month with the balance paid on the sixth day of the month; and in February, the rent was paid on the second day of the month.

The Tenant testified that these payment dates were correct. The Tenant testified that at the outset of the tenancy she had discussed sub-letting the basement suite in the rental unit to a third party occupant. The Tenant testified she was under the impression that until the basement suite was rented out, if the rent was late once in a while this would be accepted by the Landlord. The Tenant did apologize during the hearing for the late payments. The Tenant has sub-let the basement to an occupant in February.

The Tenant testified she was usually paid on the last day of the month. She testified that sometimes it was difficult due to her work hours to attend at the Landlord's residence, which was next door to the rental unit, to pay the rent.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant has been repeatedly late paying rent in five of the last seven months.

Under section 26 of the Act and the tenancy agreement the Tenant was required to pay the rent on the day it was due, here that was the first day of the month.

Policy Guideline 38 to the Act states, in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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. 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.

I find that the late payments are not sufficiently far apart to conclude the Tenant was not repeatedly late paying rent.

Therefore, I find that the Notice is valid and should not be cancelled. I dismiss the Tenant’s Application for Dispute Resolution and I allow the Landlord’s Application and grant the Landlord an order of possession for the rental unit effective at **1:00 p.m. on February 28, 2014**. This order is binding on the Tenant and any occupants of the rental unit.

Conclusion and Orders

I find the Tenant has been repeatedly late paying rent and that the one month Notice to End Tenancy is valid and should not be cancelled.

The Landlord is entitled to an **Order of Possession, effective at 1:00 p.m. February 28, 2014**. The Tenant must be served with a copy of the order. This order may be enforced through the Supreme Court of British Columbia and is binding on the Tenant and all the occupants in the rental unit.

As the Landlord has been successful in this Application, the Landlord may retain \$50.00 from the Tenant's security deposit to recover the filing fee for the Application. The balance of the security deposit must be dealt with in accordance with the Act.

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 Act.

Dated: February 20, 2014

Residential Tenancy Branch

