



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, RP, PSF, FF
OPC

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to provide services or facilities required by law / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that she seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began July 1, 2011. Monthly rent of \$780.00 is due and payable in advance on the first day of each month. The tenancy agreement provides that a security deposit of \$390.00 and a pet damage deposit of \$390.00 are both required to be paid on July 1, 2011. While the parties agree that a security deposit of \$390.00 was collected, there is a dispute around the status of the pet damage deposit. Specifically, the landlord claims that a pet damage deposit was not paid, while the tenant claims that it was paid.

Pursuant to section 47 of the Act the landlord issued a 1 month notice to end tenancy for cause dated December 29, 2013. The notice was served in-person on December 30, 2013. A copy of the notice was submitted in evidence. Reasons identified on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent

Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The tenant filed an application to dispute the notice on December 31, 2013.

Again, while there is a dispute around whether or not a pet damage deposit was collected, during the hearing the tenant acknowledged that rent has frequently not been paid in full on the first day of each month as required by the tenancy agreement.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 26 addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 addresses **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

Section 55 addresses **Order of possession for the landlord**, in part:

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.

Based on the documentary evidence and testimony, I find that the landlord issued a 1 month notice to end tenancy for cause dated December 29, 2013. The notice was served in-person on December 30, 2013. While the tenant filed an application to dispute the notice within the 10 day period available for doing so, the tenant does not dispute that rent has frequently not been paid in full on the first day of each month as required by the tenancy agreement. The tenant also testified that she intends to vacate the unit by the end of February 2014. In the result, I find that the landlord has established entitlement to an order of possession on the basis of the tenant's repeatedly late payment of rent, and the tenant's application for cancellation of the notice to end tenancy is therefore set aside. In light of this finding, I find there is no requirement that I also make a finding around whether or not a pet damage deposit was paid.

In the absence of sufficient evidence, the remaining aspects of the tenant's application are also hereby dismissed, including the application to recover the filing fee.

As the end of tenancy approaches, for information the attention of the parties is also drawn to the following particular sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, February 28, 2014**. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: February 17, 2014

Residential Tenancy Branch

