



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, MNDC, OCC, RPP MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy dated February 27, 2014 was personally served on the Tenant on February 27, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated February 27, 2014 and setting the end of tenancy for March 31, 2014?
- b. Whether the tenant is entitled to a repair order and/or an emergency repair order?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to an order for the reduction of future rent?

- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$1100 per month. Neither party provided a copy of the tenancy agreement. The landlord testified the rent was due on the 30th of the previous month. The tenant testified she thought the rent was due on the first of the month. The tenant(s) paid a security deposit and pet damage deposit totalling \$1100 at the start of the tenancy.

The tenants testified there has been an extensive mouse problem at the residential premises since September 2013 and the landlord's efforts to eradicate the problem have been insufficient. The landlord has been advised on many occasions of the problem. The landlord has responded by setting traps and bait and putting mesh around the bottom of the rental unit but the mice keep re-appearing. The landlord blames the problem on the presence of dog food in the rental unit and the failure to close the back door.

Tenant's Application to Cancel the one month Notice to End Tenancy:

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(b) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

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

(b) the tenant is repeatedly late paying rent;

Policy Guideline #38 provides as follows:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² 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

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.

Analysis

The landlord produced a Rental Record that shows that the tenant has been late paying the rent over 15 times since the start of the tenancy in November 2012. The late payments vary from 4 days late to 43 days late. The late payments includes 4 days late for February 2014 rent, 7 days late for January 2014 rent, 23 days late for December 2013 rent, 8 days late for November 2013 rent, 28 days late for October 2013 rent etc. The tenant does not deny the late payments although she disputes the rent for December was 23 days late. She further testified that the landlord has only started to serve a Notice to End Tenancy in the last couple of months. She submits the landlord served the Notice in retaliation for the tenant complaining about the mice problem.

I determined the landlord has established sufficient grounds to end the tenancy. The tenant's has been late paying the rent on at least 15 different occasions. The explanations of the tenant are not sufficient to prevent the landlord from ending the tenancy pursuant to her rights under section 47(1)(b) of the Residential Tenancy Act.

Determination and Orders

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective March 31, 2014.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant's Application for a Repair Order:

After carefully considering the disputed evidence I determined there is an extensive mouse problem at the rental unit. The landlord failed to present sufficient evidence to establish that the problem was caused by the presence of dog food. Further, I determined that while the landlord has attempted to deal with the problem, her efforts have been insufficient and the problem continues.

As a result I ordered that the landlord retain the services of a professional exterminator who is to complete a full treatment of the rental unit within 10 days of receiving this decision.

Tenant's Application for a Monetary Order:

The tenant seeks a monetary order in the sum of \$4345.71 for the reduced value of the tenancy. I accept the testimony of the tenant that she spent \$95.71 for the cost of mice traps and bait and she is entitled to reimbursement of this sum.

The tenant also claims a reduction of rent of \$300 per month for 6 months (\$1800) and compensation in the sum of \$400 per month for 6 months for the reduced value of the tenancy for having to clean the mice droppings, being unable to sleep because of the presence of the mice, ill health, failure of the landlord to advise she was out of town for a period of time etc.

I determined the landlord failed to prove that the mice problem was caused by the presence of dog food. After hearing all of the evidence I determined the tenant is entitled to compensation in the sum of \$400 for these claims.

Monetary Order, Reduction of Future Rent and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$495.71 plus the sum of \$25 in respect of the filing fee (reduced to reflect the limited success of the landlord) for a total of \$520.71.

As the tenancy is coming to an end I dismissed the tenant's application for a reduction of future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 12, 2014

Residential Tenancy Branch

