



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, RP, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to: cancel a notice to end tenancy for cause; to allow more time to cancel the notice to end tenancy; for the Landlord to make repairs to the rental unit; and to recover the filing fee.

The Tenant and Landlords appeared for the hearing. No issues in relation to the service of the Notice of Hearing documents and evidence submitted by both parties in accordance with the Residential *Tenancy Act* (the “Act”) and the Rules of procedure were raised by any of the parties. The hearing process was explained and the participants were asked if they had any questions. Both parties 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.

Preliminary Issues

The Landlord and Tenant consented to the Application being amended, pursuant to Section 64(3) (c) of the Act, to include the correct legal name of the male Landlord. I also determined at the start of the hearing that the Tenant had applied to cancel the notice to end tenancy within the time limits stipulated by Section 47(4) of the Act. Therefore the Tenant’s Application was also amended to remove this portion of the Application.

Issues(s) to be Decided

- Should the one month notice to end tenancy be cancelled?
- Is the Landlord required to make repairs to the rental suite?

Background and Evidence

This tenancy began on June 28, 2013, with the parties entering into a written tenancy agreement and rent payable in the amount of \$1,100.00 per month. A term of the tenancy agreement required the Tenant to pay the rent on time, namely on the first day of each month. The Tenant paid the Landlord a security deposit of \$550.00 on the first day of the tenancy.

The Landlords testified that the Tenant was personally served on February 14, 2014, with a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice was provided as evidence for the hearing and the reasons selected to end the tenancy by the Landlords is because the Tenant:

- is repeatedly late paying rent
- has allowed an unreasonable number of occupants in the unit/site
- has not done required repairs of damage to the unit
- has assigned or sublet the rental unit without the Landlord's written consent.

The Notice shows an effective end of tenancy date as March 31, 2014. However, the Landlord made a verbal request for an Order of Possession pursuant to Section 55 of the Act at the start of the hearing. However, the Landlords insisted that if they were to be successful in getting an Order of Possession, they would like for it to be dated for the end of April, 2014 as they wanted to give enough time to the Tenant to vacate the rental suite.

The Landlords testified to the following rental payments the Tenant had made since the tenancy started and also provided bank statements in support of these dates and amounts (late payments are highlighted in bold for emphasis):

July, 2013	rent paid in full and on time
August, 2013	rent paid in full and on time
October, 2013	\$490.00 paid on October 2 and \$610.00 on October 4
November, 2013	rent paid in full on November 4
December, 2013	rent paid in full on December 2
January, 2014	rent paid in full on January 2
February, 2014	rent paid in full on February 3
March, 2014	paid in advance on February 28
April, 2014	paid in advance on March 31

The male Landlord testified that the Tenant is required to make rent payment deposits directly into the Landlord's account.

The Tenant confirmed the payments that were made, as testified to by the Landlords. However, the Tenant submits that most of the rent payments for the first day of the month fell on a weekend or holiday date and during these times her bank was closed for her to make the payments.

However, when the Tenant was questioned as to why she could not make these payments earlier when the banks were open as oppose to making them after the first day of the month, the Tenant explained that she did not have the funds to do this. When the Tenant was questioned as to why she had made early payments for her rent in March and April, 2014, the Tenant replied that she had got extra money from rebates which enabled her to pay the rent in advance.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find the Tenant has been repeatedly late paying rent in five of the last seven months and the Tenant's explanation for these late rent payments is not sufficient to cancel the Notice issued to the Tenant for this reason.

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.

The Landlord only needs to prove one of the reasons on the Notice for it to be upheld. Therefore, I find that the Notice on the reason that the Tenant is repeatedly late paying rent is valid and should not be cancelled.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing. As the Landlord made an oral request, I grant the Landlord an Order of Possession effective on the date requested by the Landlord during the hearing.

As the tenancy has been ended in accordance with the Act, the Tenant's remaining Application is now moot and will have no effect on the tenancy.

Conclusion

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. Therefore, I dismiss the Tenant's Application in its entirety without leave to re-apply.

The Landlord is entitled to an Order of Possession, effective at **1:00 p.m. on April 30, 2014**. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental suite on this date and time.

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: April 14, 2014

Residential Tenancy Branch

