



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Prior to the hearing the hearing, the landlord submitted a written request for an order of possession should the tenant be unsuccessful in his Application. The landlord reiterated this request verbally in the hearing.

At the outset of the hearing on April 29, 2014 the tenant testified that he had received the landlord's evidence on April 22, 2014 or less than the 5 days prior to the hearing required under the Rules of Procedure. The tenant testified that he had wanted to provide evidence but did not have an opportunity to do so and sought an adjournment.

I granted an adjournment to May 5, 2014 and ordered the tenant to provide any evidence he intended to rely upon to the tenant and the Residential Tenancy Branch (RTB) no later than noon on Friday, May 2, 2014. The landlord confirmed that she received from the tenant a copy of a letter from the tenant's bank.

The tenant testified that he faxed a copy of the letter to the RTB on Thursday, May 1, 2014. He indicated a correct fax number. The tenant testified that he re-faxed the letter during the hearing. The letter was not received by the RTB.

I ordered also that if the landlord wished to submit any additional evidence in response to the tenant's evidence she could do so no later than noon on Saturday, May 3, 2014. The landlord submitted that she did not provide any additional evidence.

I note also that as part of the landlord's original evidence she submitted a copy of a Decision dated December 11, 2013 on the tenant's previous Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. In that decision the Arbitrator found that the landlord had failed to establish that rent was paid

late for the month of August 2013 but did consider the landlord's evidence that the tenant had paid September and October 2013 late.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The parties agree the tenancy began on August 1, 2013 as a month to month tenancy for the monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$1,000.00 paid. Due to a previous dispute resolution decision the tenant was ordered to deduct \$500.00 from a future rent payment to correct the deposit to \$500.00. As a note the tenant was also ordered to deduct \$50.00 from a future rent payment for a filing fee on that previous dispute.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on March 1, 2014 with an effective date of March 31, 2014 citing the tenant is repeatedly late paying rent.

During the hearing the landlord testified that the tenant was late paying rent for the months of September, October, and December 2013 and for January, February, and March 2014. The tenant agreed that he had paid rent late for the months of January and February 2014.

Originally, the tenant submitted that the reason he was late paying rent in February was because he was waiting to receive the Decision from their hearing in December 2013 because he was not sure how much his rent was going to be due to deductions the Arbitrator had mentioned in the hearing.

The tenant submits that he contacted the RTB and obtained a copy of that decision and informed the Information Officer to make a note on "his file" that he would be paying that rent late because he had been waiting for the decision. The RTB does not keep ongoing files for dispute services.

When the landlord pointed out that the reduced rent amount was paid in January the tenant agreed that it was actually the January 2014 rent that he held up paying until he received a copy of the decision.

The tenant then acknowledged, in part, after I read out the landlord's evidence that included an email from the tenant dated February 6, 2014 that stated he had put the rent in the mailbox on Monday which would have been February 3, 2014, that he had in fact also been late paying February 2014 rent.

The parties agree the tenant provided the landlord with his March rent money order on March 1, 2014 but that it was dated March 3, 2014. The tenant submitted that the letter he provided to his landlord and to the RTB (although it was not received by the RTB) was from the branch manager of his bank. He stated the letter explained that because their branch is open on Saturdays they must date their transactions for the next business day, which in this case would have been March 3, 2014. The tenant went to explain that the landlord could have negotiated the money order on March 1, 2014 had she attended the tenant's bank.

The landlord also testified that she had not received rent for the month of December 2013 on December 6, 2013 and has provided a copy of the receipt confirming this date as the date received. The tenant submits that he cannot recall paying rent late in December. The tenant submits that he has always paid his rent on time except for January and February 2014.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving the tenants notice to end the tenancy if the tenant is repeatedly late paying rent. A notice issued under this section must end the tenancy effective on a date that is not earlier than a month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that 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.

As the parties agree that the tenant was late paying rent for the months of January and February 2013 I accept that the landlord has established these two times of late payment for rent.

As the landlord has provided documentary evidence to support that the tenant failed to pay rent for the month of December 2013 and the tenant cannot provide any testimony that specifically addresses when he believes that he paid rent for December 2013, I find the landlord has established, on the balance of probabilities, that the tenant was late paying rent in December 2013.

As such, I find the landlord has established 3 late payments and is entitled to end the tenancy in accordance with Policy Guideline 38 and Section 47 of the *Act*.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

Because Section 47 requires the effective date of the notice to be at least one month after the date it was issued and because the landlord issued the Notice on March 1, 2014 I find the earliest possible date the tenancy could end was April 30, 2014. In accordance with Section 53 I find the effective date to be corrected to April 30, 2014.

Conclusion

Based on the above, I dismiss the tenant's Application in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: May 5, 2014

Residential Tenancy Branch

