



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Premier Pacific Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, FF, CNC

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for cause, a monetary claim for money owed or compensation for damage or loss and recovery of the filing fee. The tenant seeks an order cancelling the notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served.

At the outset of the hearing, the tenant's agent made a request to adjourn the hearing as he states that the tenant was recently released from hospital on July 9, 2014 and is unable to participate in the hearing. The tenant's agent states that they have been unable to obtain any medical or financial particulars from the tenant. The landlord objects to the adjournment stating that it would be against the interests of the landlord and the other occupants of the rental property to allow an adjournment. I find that it would be highly prejudicial to the landlord to adjourn this hearing as the tenant is present with his agent, yet has not been able to provide any details of why the tenant is not able to participate. The tenant's agent has stated that he is able to communicate with the tenant to obtain details of portions of the dispute. The tenant's request for an adjournment is denied, the hearing shall proceed.

During the hearing the landlord's monetary claim was dismissed with leave to reapply as the landlord's agent failed to disclose in the application or the details of his evidence that the claim was for unpaid rent as opposed to the selected claim of money owed or compensation for damage or loss.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

Neither party submitted a copy of a signed tenancy agreement, but state that one does exist.

Both parties are in agreement that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated June 11, 2014 showing an effective end of tenancy date of July 16, 2014. The notice displayed 2 reasons for cause selected.

- 1) Tenant is repeatedly late paying rent.
- 2) Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.

The landlord has submitted copies of 4 10 day notices to end tenancy issued for unpaid rent for January 2013, March 2013, August 2013 and February 2014 as well as "Breach Letters" that the tenant failed to pay rent that was due for April 2013, September 2013, December 2013 and March 2014. Each breach letter was issued 2nd day of the month stating that rent was due on the 1st of each month. The tenant's agent admits on behalf of his client that the tenant has been late paying rent, but disputes that rent is due on the 1st of each month. The landlord states that rent is normally due on the 1st of each month as indicated on his copy of the signed tenancy agreement, that is why his 10 day notices and breach letters are dated for the 2nd day of the month.

The landlord also states that the tenant has allowed his dog to defecate and urinate in suite and in the common hallways on numerous occasions as noted in a breach letter which the landlord states has occurred 5 times since January of 2014. The tenant's agent disputes this stating that the tenant has only witnessed his dog defecating on 1 occasion for which he attended to clean up. The landlord states that he has a witness who is the building manager who has witnessed the dog defecating several times as he lives directly across from the tenant. The landlord was unable to provide his witness.

The landlord states that the tenant has made renovations without permission as shown by the breach letter which he states was given to the tenant in February of 2012. The landlord has also stated that the tenant has performed dangerous electrical and plumbing work that could jeopardize the landlord's property. The tenant's agent disputes that any electrical work was performed by the tenant and also states that this breach letter from 2012 is 2 years old and is without merit. The landlord clarified that the tenant has replaced a toilet and left the old one in the hallway in June of 2014.

The landlord states that the tenant smokes in and around the rental property and that this is a non-smoking rental as provided in his tenancy agreement. The tenant's agent dispute this stating that the tenant no longer smokes and only consumes an "e-cigarette". The landlord also states that the tenant is belligerent to other occupants of the rental property. The tenant disputes this.

Analysis

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant regarding the landlord's cause to end the tenancy for repeatedly late paying rent. The tenant's agent has admitted that the tenant has been late paying the rent, but disputes that the rent is not due on the 1st of each month. The landlord states that rent is due on the 1st of each month as per the signed tenancy agreement, which neither party has submitted. The landlord also relies on the numerous 4 breach letters and the 4 10 day notices to end tenancy issued for unpaid rent which state that rent is due on the 1st day of each month. The tenant's agent does not dispute the contents of the landlord's submitted documentary evidence. Residential Tenancy Branch Policy Guideline #38 states,

"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.

As such, I find based on the submitted evidence that the landlord has established that the tenant has been repeatedly late paying rent. The landlord's application for an order of possession is granted. The tenant's application is dismissed. The tenant must be served with the order of possession. 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.

I also find that the landlord has failed to provide sufficient evidence to satisfy me that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord's claims are disputed by the tenant. The landlord has failed to provide sufficient evidence to satisfy me of their claims. These portions of the landlord's claim are dismissed for lack of sufficient evidence.

The landlord is entitled to recovery of the \$50.00 filing fee. The landlord is granted a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession and a monetary order for \$50.00.

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: August 20, 2014

Residential Tenancy Branch

