



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPB, MND, MNSD, MNDC, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant requesting that a One-Month Notice to End Tenancy for Cause served on the tenant by the landlord be cancelled.

This hearing dealt with a cross application for Dispute Resolution by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause that had been issued on July 22, 2014. The landlord is also seeking monetary compensation for fines and damage to the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Landlord's Monetary Claim

In regard to the landlord's monetary claim, I find that the primary issue before me to determine is whether or not this tenancy should be terminated for cause under section 47 of the Act. However, the landlord has also included a monetary claim for damages under section 67 of the Act in their application..

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the landlord's monetary claim pertained to a separate and distinct section of the Act that was not connected to the One Month Notice to End Tenancy for Cause.

I find that the landlord's request for a monetary order to compensation for damage or repairs and the request for the retention of the tenant's security deposit in partial satisfaction of the claim are issues that would be dealt with *after* the tenancy has ended and the move out condition inspection, under section 35 of the Act, has been completed.

Accordingly, I find that the monetary portion of this application should be severed and the matter must be dealt with through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause or should the Notice be cancelled?

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the One Month Notice to End Tenancy for Cause, copies of bank records and copies of written communication.

The tenancy began on May 1, 2012 and current rent is \$2,300.00. A security deposit of \$1,150.00 and pet damage deposit of \$575.00 were paid.

The One Month Notice to End Tenancy for Cause in evidence indicated that:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
 - (iii) put the landlord's property at significant risk.
- The tenant has assigned or sublet the unit without the landlord's consent

The landlord testified that the rent was due on the first day of each month, as indicated in the tenancy agreement in evidence. The landlord testified that the tenant has repeatedly given the landlord cheques that did not clear. The landlord provided six different dates that the rent was paid late, due to NSF cheques over the course of the

tenancy. The landlord requested an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

The tenant testified that the returned cheques were due to the fault of the bank and made reference to the bank records in evidence. The tenant also pointed out that the landlord sometimes failed to deposit the cheques in a timely manner and this caused some problems with the tenant's bank balance. The tenant believes that the tenancy should not be ended due to repeated late payment of rent.

Analysis

The burden of proof is on the landlord to show that the One-Month Notice to End Tenancy for Cause was warranted.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for repeated late payment of rent.

I find that the testimony from both parties along with the evidence verified that the tenant's rent was paid late on more than 3 occasions. For this reason, I find I cannot cancel the landlord's One-Month Notice to End Tenancy for Cause. Therefore, find that I must dismiss the tenant's application.

Accordingly I find that the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause that is being upheld. I hereby grant the landlord an Order of Possession effective October 31, 2014. This order must be served on the tenant and may be enforced through B.C. Supreme court if necessary.

I find that the landlord is entitled to be reimbursed the \$50.00 cost of the application and order that this amount be retained from the tenant's security deposit. The tenant's remaining security and pet damage deposits must be administered in accordance with section 38 of the Act, after the tenant vacates.

The portion of the landlord's application relating to the monetary claim is hereby dismissed with leave to reapply.

The tenant's application is hereby dismissed without leave.

Conclusion

The landlord is successful in the cross application and is granted an Order of Possession based on the One-Month Notice to End Tenancy for Cause. The landlord's monetary claim is severed from the application and dismissed with leave.

The tenant is not successful in the application to cancel the One-Month Notice to End Tenancy for Cause and the application is dismissed without leave.

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: October 06, 2014

Residential Tenancy Branch

