



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 was sufficiently served on the Tenant on August 15, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 29, 2014.

With the consent of both parties I ordered that the Application for Dispute Resolution be amended to add the Society as a respondent.

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 Notice to End Tenancy dated August 15, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 1, 2011. The present rent is \$1604 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$761 on September 19, 2011.

Analysis

The Notice to End Tenancy relies on section 47(1)(b), (d)(i) and (i) 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;

...

(d) 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,

...

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Analysis

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.

The landlord testified the tenant has made the following late payments:

2012

July rent paid on July 6, 2012

August rent paid on August 3, 2012

2013

July 2013 rent paid on July 13, 2013

August 2013 rent paid on August 8, 2013

December rent paid on December 6, 2013

2014

January 2014 rent paid on January 7, 2014

February 2014 rent paid on February 3, 2014

April 2014 rent paid on April 2, 2014

May 2014 rent paid on May 5, 2014

The tenant acknowledged responsibility for some of the late payments. He testified in some cases his roommates failed to pay him the rent on time. He further testified that in some cases the rent was paid late because he had to incur significant additional costs because he had to deal with a bedbug problem. The landlord had served notices on him demanding he pay the cost of eradicating the bedbugs. The tenant further testified he had to pay significant cost cleaning his clothes, sheets etc.

I determined the landlord has sufficient cause to end the tenancy. The tenant has paid the rent late on more than 3 occasions. Section 26(1) of the Residential Tenancy Act provides the must pay the rent when due even where the landlord has failed to do what it is supposed to do under the tenancy agreement unless the tenant has first obtained an order from an arbitrator permitting the reduction of rent or if it is an emergency repair. I determined the landlord has not waived reliance on this section. Further I determined this is not a situation where there are exceptional circumstances such as an unforeseeable bank error causing the late payment.

Given my determination with the first ground it is not necessary to consider the other grounds.

Determination and Orders

After carefully considering all of the evidence 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. I further order that the application of the tenant for the cost of the filing fee be dismissed.

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. The rent was paid for October and was accepted by the landlord for "use and occupation only." As a result I granted the landlord an Order for Possession effective October 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.

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 20, 2014

Residential Tenancy Branch

