



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause and later amended to include a claim for a monetary award. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated November 13, 2014 be cancelled?

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in North Vancouver. The tenancy began on March 1, 2014 for a one year fixed term. Rent in the amount of \$1,100.00 is due on the first of each month. On November 13, 2014 the landlord personally served the tenant with a one month Notice to End Tenancy for cause. The stated ground for the Notice to End Tenancy is that the tenant is repeatedly late paying rent.

The landlord testified that was late paying rent in April, 2014. She testified that the tenant failed to pay the rent in full. The rent was paid late and by instalments. The landlord submitted a copy of a bank transfer that showed the tenant to have made an electronic bank transfer of funds in the amount of \$540.00 on April 24, 2014 in payment of the balance of April rent.

The landlord testified that rent for May was not paid until May 13th when it was paid in cash. The landlord sent an e-mail to the tenant to confirm the payment on the day it was made. The landlord said that she received rent for June and July on or about the first of each month, but rent for August was not paid on the first of the month. The landlord received \$200.00 on August 16th. She served the tenant with a 10 day Notice

to End Tenancy for unpaid rent on August 23, 2014 and received the balance of rent for August on August 27, 2014.

The landlord said that September rent was not paid on September 1st. The landlord personally served the tenant with a 10 day Notice to End Tenancy on September 2, 2014. The rent was then paid by bank transfer on September 5th.

The tenant paid rent for October on time but was late paying rent for November. The tenant paid \$550.00 towards November rent on November 3, 2014. The landlord personally served the tenant with a 10 day Notice to End Tenancy on November 4, 2014. The tenant then paid the balance of the rent for November.

The landlord testified that the tenant has paid no rent for December and the landlord has given the tenant a Notice to End Tenancy for unpaid rent.

On December 9, 2014 the tenant submitted an amended application. The amendment sought payment of the sum of \$2,200.00 claimed to be compensation for harassment by the landlord. The tenant did not mail the amended application to the landlord until December 12, 2014.

The landlord submitted documentary evidence in response to the tenant's amended application. The documents included a number of letters of complaint to the landlord from the strata manager concerning the tenant's alleged violations of the strata bylaws. The letters set out a number of fines levied against the landlord as a result of the tenant's activities and use of the strata property. The landlord said that the tenant's complaints of harassment stemmed from the delivery to the tenant of letters and notices of these infractions.

The tenant gave reasons for several of the late rent payments; she said the first late payment occurred because her boyfriend was paying the rent, but he was working up north when the rent was due. She said the second rent payment was late because her boyfriend left her and stole her possessions, including her car and cash. She said she was late on another occasion because she was taken to a suicide unit. She said another payment was late because she was working and couldn't make a deposit, but she said the landlord approved the late payment on that occasion. The tenant said that on another occasion the landlord was away and not available to receive the rent payment on the first of the month. The tenant testified that she paid December rent to the landlord in cash at a shopping mall in West Vancouver. She submitted a photocopy that she said was a copy of a receipt given by the landlord for the December rent payment.

The landlord testified that she received no rent from the tenant for the month of December. She testified that the supposed receipt was a fabrication by the tenant. The landlord noted that the tenant provided only a poor quality photocopy of the receipt that was copied onto a page containing other photocopied hand writing. The landlord noted

that the receipt was not in her handwriting and it appeared that a facsimile of her signature had been copied from some other document to make it appear as though it had been signed by the landlord. At the hearing the tenant said that she wrote the text of the receipt and the landlord signed it.

Analysis

The tenant testified that she has paid December rent. I did not find her testimony to be credible and I find that rent for the month of December has not been paid. The landlord has been careful to document rent payments throughout the tenancy. When she received a cash rent payment from the tenant's sister earlier in the tenancy she was careful to document the receipt of the payment by sending an immediate e-mail to acknowledge the payment. The tenant has submitted a copy of what she said is a receipt for the December rent payment. Although the tenant said at the hearing that she wrote the text of the receipt, it is written in a style different from the tenant's ordinary handwriting as it appears on numerous documents that she submitted. I find that the supposed receipt submitted by the tenant is an amateurish attempt to falsify a receipt; had the receipt been genuine, I am sure that the tenant would have taken pains to produce the best possible copy, but instead the document submitted appears to have been contrived to conceal rather than reveal detail.

I accept the landlord's testimony that the tenant has been late paying rent for the months of April, May, August, September, November and now for December when no rent has been paid.

The Residential Tenancy Act provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

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 *Act* does not define what constitutes “repeatedly late”. The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. The tenant provided no corroborating evidence with respect to her excuses for late payments; I do not find that the tenant’s personal circumstances, as she described them, constitute an exceptional circumstance, as discussed in the Policy guideline. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant’s application.

The tenant claimed compensation for harassment, but I find that the claim is without merit. The landlord was compelled to pass on complaints from the strata manager concerning the tenant. The landlord is also entitled to deliver Notices to End Tenancy when the rent is not paid on time. The landlord is faced with accumulating fines from the strata corporation and communicating these facts and the letters of complaint to the tenant is not harassment. The tenant’s application for a monetary award is dismissed without leave to reapply. The landlord has requested an order for possession. . I find that the landlord is entitled to an order for possession effective December 31, 2014, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant’s application is dismissed without leave to reapply. The landlord has been granted an order for possession effective December 31, 2014, pursuant to the Notice to End Tenancy dated November 13, 2014.

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: December 23, 2014

Residential Tenancy Branch

