



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application filed by the tenant for an order cancelling the notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. Both parties have confirmed receipt of the notice of hearing package and the submitted documentary evidence.

At the outset the landlord stated that he was an agent and that the named landlord is also an agent of the landlord, Bourbon Hotel as noted on the 1 month notice to end tenancy issued for cause. The tenant made no comment. As such, I accept the landlord's agent ability to attend and represent the landlord.

During the hearing, the landlord made an oral request that if the 1 month notice to end tenancy issued for cause dated November 2, 2014 was upheld that he may receive an order of possession for the effective date of the notice.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on June 1, 2014 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$525.00 payable on the 1st of each month and a security deposit of \$262.50 was paid on June 1, 2014.

Both parties confirmed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated November 2, 2014.

The 1 month notice to end tenancy dated November 2, 2014 displays an effective end of tenancy date of December 31, 2014 and 3 reasons for cause.

- 1) Tenant is repeatedly late paying rent.
- 2) Tenant has allowed an unreasonable number of occupants in the unit/site.
- 3) Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord states that the tenant has been repeatedly late paying rent and has provided copies of 3 notices to end tenancy issued for unpaid rent dated, July 2, 2014, September 2, 2014 and November 2, 2014. The tenant has acknowledged receiving the 3 notices and that he was late paying rent each time, but that rent was always paid within the 5 days as allowed by those notices. The tenant argued that he did not know that repeatedly paying the rent was an issue or he would have complied.

The landlord has also provided a written statement dated October 2, 2014 from another occupant to the landlord that the tenant's guests were interfering with other occupants of the rental building. The landlord has also provided a copy of a letter dated October 22, 2014 that the tenant is allowing another person to occupy his suite with him. The letter warns the tenant to stop or that failure to do so may result in legal action. The landlord has provided a copy of letter from one of the rental occupants that the tenant's visitors are using the shared bathrooms for long durations and that the tenant's female guest were "kicked out" by staff. The landlord has stated that the tenant is engaging in illegal activity. The tenant disputes the landlord's claims that he "does not have lots of people coming to his place, maybe 5/10 people a day". The tenant disputes that he is not engaging in any illegal activity and is not jeopardizing the building or other tenants.

Analysis

I accept the evidence submitted by both parties and find based upon the tenant's direct testimony that the landlord has established a claim for repeatedly late paying rent and was issued a 1 month notice to end tenancy issued for cause dated November 2, 2014.

On the second and third reasons for cause, I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenant has allowed an unreasonable number of

occupants in the unit. Nor has the landlord provided any evidence that the tenant has engaged in illegal activity. On these two reasons for cause the landlord has failed. Residential Tenancy Branch Policy Guideline #38, Repeated late payment of rent states,

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.

The landlord has provided copies of 3 10 day notices to end tenancy issued for unpaid rent dated July 2, 2014, September 2, 2014 and November 2, 2014. The tenant has acknowledged in his direct testimony that he was late paying rent on all 3 occasions. I am satisfied that the landlord has provided sufficient evidence to satisfy me that the tenant was repeatedly late paying rent and that under RTB Policy Guideline #38, the tenant was repeatedly late paying rent. The tenancy began in June of 2014 and the tenant has been late paying rent on 3 occasions out of a possible 6. I find that the tenant's excuse of not realizing that repeatedly paying the rent late would become an issue as it cannot be said that the tenant was not aware that he was not paying the rent late and that the landlord was repeatedly serving him notices to that effect. The tenant in each case did not dispute the 10 day notices to end tenancy issued for unpaid rent.

The landlord made an oral request for an order of possession to end the tenancy on the effective date of the notice.

The tenant's request to cancel the notice to end tenancy is dismissed as the landlord has established reasons for cause issued on the notice dated November 2, 2014 for repeatedly late paying rent.

The landlord is granted an order of possession effective on December 31, 2014. 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.

Conclusion

The landlord is granted an order of possession effective on December 31, 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 09, 2014

Residential Tenancy Branch

