



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The landlord BS made an oral application for an Order of Possession, if the tenant's application was not successful. The landlord did not make any other application at this hearing with respect to unpaid rent.

The landlord BS gave undisputed sworn testimony that on October 5, 2014, he served the 1 Month Notice with an effective date of October 25, 2014 to the tenant by posting the notice on the tenant's door. The tenant confirmed receipt of this notice. I am satisfied that the 1 Month Notice was deemed served on October 8, 2014 in accordance with sections 88 and 90 of the *Act*. The corrected effective date of the 1 Month Notice is November 30, 2014.

The landlord testified that he served the tenant with the dispute resolution package on October 8, 2014 by hand delivering the dispute resolution package with the Notice of Hearing to the tenant. The tenant also confirmed receipt of this package and notice. On the basis of this evidence, I am satisfied that the tenant was duly served with this notice on October 8, 2014, pursuant to sections 89 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month to month tenancy began January 1, 2012. The rental amount of \$945.00 is payable on the 1st of each month. The landlord continues to hold a security deposit in the amount of \$450.00 paid on December 29, 2011.

The landlord testified that the tenant has engaged in illegal activity that has jeopardized a lawful right or interest of another occupant or the landlord. As evidence, the landlord provided three police file numbers and oral testimony regarding disputes between himself and the tenant and the tenant and other occupants on the residential property. He testified that he is not aware of the status of these police files. He also testified that he did not press charges against the tenant when police were called to the residential property.

The landlord testified that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and/or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord gave sworn testimony that the tenant has threatened him and that his car was vandalized by the tenant. He provided testimony of other incidents where the tenant has attempted to harm or intimidate other occupants of the residential property. In support of this claim, the landlord referred to documentary evidence in the form of handwritten notes. The landlord testified that those notes are a file log reflecting incidents involving disruption by the tenant.

The landlord testified that the tenant has been late with rent over the past six months. The landlord and the tenant agreed that rent has been accepted late regularly over the course of three years of tenancy. The landlord testified that, within the last three months, the tenant has received warning notices verbally and in writing. The tenant testified that he works in construction and, while he always pays his rent, he often pays late. The landlord and the tenant agreed that the tenant paid \$120.00 on October 1, 2014 and \$350.00 on October 15, 2014. The tenant acknowledged the outstanding rental amount of \$1,300.00 from unpaid rent in September and November as well as partially unpaid rent in October.

Analysis

The landlord's 1 Month Notice for Cause with a corrected effective date of November 30, 2014 indicates that the tenant is repeatedly late paying rent; that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant has engaged in an illegal activity that has or is likely to jeopardize a

lawful right or interest of another occupant or the landlord. The landlord relied on section 47 of the *Act* to request an end to this tenancy if any of the above reasons identified in the 1 Month Notice were valid.

Given the sworn testimony of the landlord's agent and the documentary evidence in the form of receipts, I accept that the tenant has consistently paid his rent late. The tenant acknowledged that he has paid rent late. I find that the landlord informed the tenant that his tenancy was in jeopardy if he continued to pay rent late.

While landlords are expected to meet their obligations under the *Residential Tenancy Act*, a tenant also must know both their rights and responsibilities. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is sufficient evidence that the tenant has failed to pay rent and that he repeatedly pays his rent late.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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 written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant have been late in paying their rent on at least three occasions. Although the tenant provided different reasons for why his rent was not received by the landlord for some of these months, I am satisfied that there is a pattern of late payment of rent throughout this tenancy.

I find that the landlord has provided sufficient evidence of cause to end the tenancy. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ended on the corrected effective date of November 30, 2014.

As the applicant's claim has been dismissed, he is not entitled to recover the filing fee he paid for this application.

At the hearing of this matter the landlord requested an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy, I will therefore issue the Order of Possession.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 11, 2014

Residential Tenancy Branch

