



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, MNR, MNSD, MNDC, FF
Tenant: CNC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his agent; and the tenant.

Part way through the hearing the tenant requested an adjournment. I heard the tenant's submissions on the request for adjournment and advised the parties I would reserve my decision on the matter of adjournment and that we would proceed with the evidence testimony already submitted.

The tenant testified that when she had submitted her Application for Dispute Resolution to dispute the Notice to End Tenancy a hearing date was set for April 9, 2015. She states that she was not aware the hearing was changed until she received the landlord's evidence package on January 21, 2015.

The tenant also submits that she had been told that she did not have to have all of her evidence in to the Residential Tenancy Branch or to the landlord until 14 days before the hearing. She states that she wants to obtain evidence from other tenants in the building who have a rent payment arrangement to pay rent twice per month instead of on the 1st of each month.

A review of the audit notes on the file show that the tenant was actually contacted by Residential Tenancy Branch staff on January 15, 2015 and told that the hearing had been re-scheduled. The notes also indicate that the tenant called the Branch later that same date and was advised that if she did not have her evidence that she should explain why to the Arbitrator.

The tenant testified that she does not have any of the evidence that she wanted to submit from the other tenants, because she hasn't been able to meet with any of them because everybody works.

Residential Tenancy Branch Rule of Procedure 2.5 states that to the extent possible the applicant must submit to the Residential Tenancy Branch copies of all documentary and digital evidence to be relied on at the hearing. Rule 3.1 states that within 3 days the applicant must then serve to the respondent their Application and the evidence they submitted to the Residential Tenancy Branch under Rule 2.5.

Rule 3.14 states that evidence must be received by the respondent at least 14 days before the hearing. Rule 3.15 states that a respondent's evidence must be received by the applicant at least 7 days prior to the hearing.

Rule 6.4 sets out the criteria I must consider for granting an adjournment as follows:

- The oral or written submissions of the parties;
- Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution proceeding;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- The possible prejudice to each party.

Based on the audit notes I find that the tenant was informed that the hearing date had been changed from April 2, 2015 to February 6, 2015 on January 15, 2015 or 21 days before this hearing. Based on the tenants own testimony she received the landlord's hearing package on January 21, 2015 (confirmed by Canada Post tracking information) or 16 days before this hearing, in compliance with Rule 3.14.

The reason the tenant seeks the adjournment is to obtain evidence from other tenants in the residential property in regard to the payment arrangements they have with the landlord under their own and separate tenancy agreements. As the matters before me relate solely to the repeated late payment of this tenant's rent contrary to her tenancy agreement with the landlord I find the payment arrangements of other tenants has no bearing on this tenant's payment arrangements and/or history. As such, I find an adjournment to provide the tenant the opportunity to obtain this non-relevant evidence will not contribute to the resolution of the matters before me.

Since the tenant has not taken any action at all to obtain this additional evidence since she filed her own Application for Dispute Resolution; after receiving verbal notification from the Residential Tenancy Branch 21 days before this hearing; or after receiving the landlord's Application and evidence 16 days prior to this hearing, I find that the need for the request for adjournment is based in great part on the tenant's failure to try to obtain the evidence she says she wants to submit.

For these reasons, I dismiss the tenant's request for adjournment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on October 8, 2013 for a 1 year fixed term tenancy beginning on October 15, 2013 that converted to a month to month tenancy on October 15, 2014 for the monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on December 31, 2014 with an effective vacancy date of January 31, 2015 citing the tenant was repeatedly late paying rent.

The tenant submits she received the 1 Month Notice to End Tenancy for Cause on January 2, 2015. There was no other evidence submitted by either party to dispute this statement.

The parties agree that the tenant has never paid rent in accordance with the requirements of the tenancy agreement to have it paid in full on the 1st of each month. They agree the payments are sporadic and late.

The tenant submits that they have to pay rent by taking it to a store and that sometimes the store is not open when rent is due. The tenant states that ever since she has been paying it this way the landlord has never contacted her to advise her that he wanted rent to be paid on the 1st of each month or that this payment arrangement was a problem.

The landlord submits that they have had to call her several times to find out when rent would be paid. The tenant submits that the landlord has never called but that they have only communicated through text messages but never indicating that this a problem.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Section 47(2) states that a notice given under Section 47 must end the tenancy on a date that is not earlier than 1 month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 26 of the *Act* states 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 the right under this *Act* to deduct all or a portion of the rent.

As there is no evidence before me that the parties had entered into a subsequent tenancy agreement that changed the date of rental payments I find that in accordance with the tenancy agreement the tenant is required to pay all rent on the 1st of each month.

I find it is not necessary for the landlord to remind or track down a tenant to obtain the rent when it is due as the payment of rent is one of the most fundamental obligations a tenant has under a tenancy agreement. I also find that is not necessary for a landlord to provide any type of warnings that the late and sporadic payments are contrary to the tenancy agreement, the tenant should be well aware when they sign the tenancy agreement of this requirement.

Residential Tenancy Policy Guideline #38 stipulates that three late payments are the minimum number sufficient to justify a notice under these provisions. From the evidence before me, I find that the tenant has been late paying rent at least this many times and in fact for at least 17 payments, including the payment for February 2015 which was after the tenant received the 1 Month Notice.

As such, I find the landlord has established sufficient cause to end the tenancy in accordance with the 1 Month Notice to End Tenancy for Cause issued on December 31, 2014. I, therefore, dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that complies with the relevant Section.

I accept the tenant received the 1 Month Notice to End Tenancy on January 2, 2015 and as such, I find the effective date of January 31, 2015 does not comply with the requirements under Section 47 to be at least 1 month after it is received by the tenant. Pursuant to Section 53 I order the effective date of the Notice is February 28, 2015.

Conclusion

I find the landlord is entitled to an order of possession effective **February 28, 2015 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$900.00** comprised of \$850.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$475.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: February 06, 2015

Residential Tenancy Branch

