



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

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 landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord agreed with the tenant that this tenancy should continue. Therefore, the 1 Month Notice to End Tenancy is cancelled.

Issues to be Decided

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

Background and Evidence

The tenant testified that the tenancy began in November, 2011. The rental amount is \$1300.00 payable on the first of each month with an additional \$25.00 fee for monthly parking. The landlord testified that she continues to hold a \$600.00 security deposit that the tenant paid at the beginning of the tenancy.

The landlord testified that a 1 Month Notice to End Tenancy was posted on the tenant's door on February 10, 2015. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on February 13, 2015, 3 days after its posting. The tenant testified that she served the landlord with her Application for Dispute Resolution package with Notice of Hearing on February 20, 2015 by registered mail. I find the landlord deemed service with the tenant's dispute resolution package on February 25, 2015, 5 days after its mailing.

The landlord testified that she provided a letter to the tenant with the 1 Month Notice issued on February 10, 2015. It stated,

We are giving you a One Month Termination Notice due to repeatedly late rent payments. Please note that in order to place this notice aside March's rent must be paid on the 1st of the month as per The Residential Tenancy Act.

The landlord testified that this letter accompanying the 1 Month Notice was merely meant as a warning. The tenant testified, and the landlord confirmed, the tenant had not been late with rent for at least two months. The tenant testified that she made some late payments at the end of 2014. She also testified that the property manager spoke to her and explained payments would not be accepted late. She testified that conversation took place in December 2014. She testified that she did not pay rent late after the agreement with the property manager was finalized. She testified that she paid rent for both February and March 2015 in full and on time. The tenant testified that, on receipt of the 1 Month Notice, she was uncertain how to proceed. She testified that, out of an abundance of caution, she filed for dispute resolution, knowing that her time to do so was limited.

Analysis

The landlord withdrew her 1 Month Notice at this hearing, acknowledging the matter of late rental payments was resolved. The tenant was, therefore, successful in her application to cancel the notice to end tenancy. Furthermore, the tenant testified that she felt it necessary to respond to the claim, unwilling to risk the loss of her tenancy if she failed to do so within the timelines.

Residential Policy Guideline No. 38 states that the *Residential Tenancy Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. It also provides that; three late payments are the minimum number sufficient to justify a notice to end tenancy; and that 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. Given the provisions of the Legislation, the tenant could not be certain that her tenancy was not in jeopardy.

I also find that it is not reasonable to expect a tenant to solely rely on a letter attached to a Notice to End Tenancy claiming that it will not be executed if payment is made. If the landlord wished to seek to enforce the Notice to End Tenancy, the letter would not necessarily have precluded her from doing so.

Based on the landlord's actions and the outcome at this hearing, with the landlord acknowledging the propriety of canceling the 1 Month Notice, I find that the tenant was successful in her application and I order the recovery of her filing fee in this matter.

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee ...by one party to a dispute resolution proceeding to another party ...

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Conclusion

I find that the tenant is entitled to recover her filing fee for this application from the landlord.

To implement recovery of this \$50.00 filing fee, I order that the tenant reduce her rent by \$50.00 for one month in the future.

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: March 24, 2015

Residential Tenancy Branch