



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' 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 their filing fee for this application from the landlord pursuant to section 72.

The tenants both attended the hearing. The landlord's agent attended the hearing. All parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent acknowledged service of the tenants' dispute resolution package. The tenant AB acknowledged service of the landlord's evidence.

At the hearing, the agent made an oral request for an order of possession in the event that I find that the 1 Month Notice is valid.

Preliminary Issue – Direction for Evidence After Hearing

Neither party submitted a copy of the tenancy agreement for this tenancy.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* provides that I may direct that evidence be submitted after the commencement of a hearing.

The tenants and agent both had a copy of the tenancy agreement with them at the hearing. All parties were able to confirm the details that were being entered into evidence. As the all parties have a copy of the tenancy agreement, there is no undue

prejudice to any party by my acceptance of the agreement after the hearing. I ordered that the landlord submit the tenancy agreement by fax.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant WB and the landlord entered into a tenancy agreement on 15 August 2011 for a tenancy beginning 1 September 2011. The tenancy agreement provide that monthly rent of \$1,600.00 was payable on the first. Rent increased in subsequent years. The most recent rent amount is \$1,696.52.

The tenancy agreement lists both tenants, but only the tenant WB signed the tenancy agreement. The landlord submits that the tenancy is only with the tenant WB and that the remainder of the parties are occupants or roommates of the tenant WB.

The tenant AB testified that the rental unit is occupied by the tenant AB, the tenant WB, their older adult son and his wife, and the tenants' younger son. The landlord completed shelter information statements for two of the other occupants of the rental unit.

On 26 March 2015, the agent personally served the tenant WB with the 1 Month Notice. The 1 Month Notice set out an effective date of 30 April 2015. The 1 Month Notice set out that it was given as the tenants were repeatedly late paying rent. This notice was last in a series of notices. The first 1 Month Notice was issued for late payment of rent in January 2014. The second 1 Month Notice was issued for late payment of rent in February 2015.

The agent testified that the tenants have always been late with their rent. The agent testified that repeated telephone calls to the tenant have been made regarding late rent.

The tenant AB testified that the landlord said that they wished to receive rent byway of post-dated cheques. The tenant AB testified that the tenants were concerned about the costs associated with this payment method and asked to pay by cash or debit. The tenant AB testified that an agent of the landlord told him that the tenants could come into the office to pay their rent. The tenant AB testified that the office was not open every day and that is why their late would be a few days late. The tenant AB testified that there was an understanding between the tenants and the landlords in respect of these late payments.

The tenant AB submits that the tenants' agreement with the landlord is collect one half the rent from the tenants and one half the rent from one of the tenants' sons. The tenant AB testified that one of his sons is responsible for paying the other half of rent. The tenant AB testified that the landlord has always allowed splitting rent. The tenant AB admitted that his son would pay rent late. The tenant AB testified that the tenants' half of rent would be paid without failure as soon after the first of the month as possible.

The tenant WB testified that the landlord would allow the tenants to pay rent late if they did not have the full amount. The tenant WB testified that it is difficult to get to the landlord's office to pay the rent because the office closes at 1600. The tenant WB testified that the tenants' portion of rent is always on time.

The agent testified that there is no agreement that states that rent is due any day other than the first.

The tenant AB testified that the tenants work hard to pay their rent. The tenant AB testified that his son believed he had caught up on his rent arrears when he made a payment of \$1,000.00 on 22 January 2015 and did not understand that he was still in arrears.

The tenant AB testified that he believes that the landlord wants to remove the tenants because the owners of the rental unit are running into financial difficulties. The tenant AB testified that the owners told the tenant AB that if he did not appear for today's hearing that they would allow him to stay a bit longer. The tenant AB testified that the tenants are having difficulty finding a new place given the size of their family and the tenant WB's health condition.

The landlord provided me with a ledger that sets out the tenants' payment history over since 1 September 2014. I was provided with copies of the receipts issued to the tenants for their rent payments. The ledger appears to contain arithmetic errors. To calculate the timing of the tenants' rent payments I have used the receipts that were

provided. The receipts indicate that the tenants would pay their rent in two or more partial payments each month.

Since September 2014, rent for this tenancy was paid late on all months except one:

- Rent due 1 September 2014 was paid by 3 October 2014.
- Rent due 1 October 2014 was paid by 30 October 2014.
- Rent due 1 November 2014 was paid by 24 November 2014.
- Rent due 1 December 2014 was paid by 30 December 2014.
- Rent due 1 January 2015 was paid by 22 January 2015.
- Rent due 1 February 2015 was paid by 12 February 2015.
- Rent due 1 March 2015 was paid by 2 March 2015.
- Rent due 1 April 2015 was paid 1 April 2015.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

Residential Tenancy Policy Guideline, “38. Repeated Late Payment of Rent” provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b). In exceptional circumstances the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

The tenancy agreement sets out that rent is due on the first. The tenants have testified that the landlord would accept rent late and that the landlord is bound to those prior acceptances. I find that while these arrangements may have prevented the landlord from seeking an end to tenancy based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the acceptance of late rent does not amount to waiver of the landlord’s right to receive rent when it is due. The landlord asserted its rights to receive rent on time by issuing the two prior notice to end tenancy for cause for late rent. I find that the tenants have failed to show that there were any alternate agreements that alter the tenancy agreement to change the date that rent was due. I find that the landlord has not waived its right to act on this 1 Month Notice.

The agent has provided evidence that in the last eight months, rent was paid on time in only one month. The tenants have testified that they were late paying rent because the office was difficult to get to. This is not a sufficient reason for paying rent late. It is not

an exceptional circumstance. Pursuant to section 26 of the Act, the tenants have the obligation to pay their rent when it is due under the tenancy agreement. The tenants failed to do so.

In this case, the tenant WB is the only party that signed the tenancy agreement. *Residential Tenancy Policy Guideline*, “13. Rights and Responsibilities of Co-tenants” discusses the rights and obligations of tenants, cotenants, and occupants:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

...

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

The tenants submit that, by filling out the shelter information form, the sons became cotenants and that the tenants were not responsible for the late payments of their sons. I do not agree with this submission. The shelter information forms are used for the purposes of determining the applicant's entitlement to the shelter portion of an assistance payment; it does not determine the rights and obligations of a tenant and landlord. The written tenancy agreement is the sole determinant of the status of the individuals. I find that the tenant WB is the only legal tenant in this tenancy as she is the only party that entered into the tenancy agreement. The remainder of the parties occupying the rental unit are occupants. In any event, the tenants have not provided any evidence that would defeat the presumption of joint tenancy.

I find that the 1 Month Notice issued on the basis of repeatedly late rent payments is valid. As such I dismiss the tenants' application to cancel the 1 Month Notice without leave to reapply.

As the tenants have not been successful in their application, they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenants' application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. This order of possession is effective two days after it is served upon the tenant(s). This order may be served on the tenant(s), filed with the Supreme Court of British Columbia and 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 subsection 9.1(1) of the Act.

Dated: May 15, 2015

Residential Tenancy Branch

