



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNC, DRI, OLC, PSF, RP, RR

Introduction

This was a hearing with respect to the tenants application to dispute a one month Notice to End Tenancy, among other matters. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant called in approximately 10 minutes after the hearing commenced. She called in late because she was expecting to receive a call.

Issue(s) to be Decided

Should the Notice to End Tenancy dated May 6, 2015 be cancelled?
Is the tenant entitled to any other relief claimed in the application?

Background and Evidence

The rental unit is a house in Powell River. The tenancy began in October 2014. The monthly rent is \$1,275.00, payable on the first of each month.

On May 6, 2015 the landlord's agent served the tenants with a one month Notice to End Tenancy for cause by posting it to the door of the rental unit. The Notice to End Tenancy required the tenants to move out of the rental unit by June 30, 2015. The reasons for seeking to end the tenancy were that the tenant has been repeatedly late paying rent, that she has allowed an unreasonable number of occupants in the rental unit and that she has assigned or sublet the unit without the landlord's consent.

The tenant filed an application to dispute the Notice to End Tenancy. In addition to the application to cancel the Notice to End Tenancy, the tenant requested unspecified remedies that related to a flood in the partially finished basement of the rental unit.

The landlord's agent submitted copies of receipts for the tenant's rent payments beginning in January. He testified that the tenant has been late paying rent each month from January onwards. At the hearing the tenant acknowledged that she has been late in paying the rent. She said she was arranging to move, and based on a recent letter from the landlord's agent, said she was under the impression that she had two months to do so. The tenant has not paid rent for June. She said she was waiting for the outcome of this hearing before she paid the rent.

The landlord's agent requested at the hearing that the Notice to End Tenancy be upheld and requested that the landlord be granted an order for possession pursuant to the Notice.

Analysis and conclusion

The Residential Tenancy Act provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes "repeatedly late". The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. The tenant did not

allege that there were special circumstances and the rent for June is unpaid. The landlord's documents show that she has been late paying rent for the past six months. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application. The landlord has requested that I issue an order for possession. Pursuant to the Notice to End Tenancy the order for possession is effective June 30, 2015. I find that the landlord is entitled to an order for possession effective June 30, 2015 after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

The tenant said at the hearing that she intends to seek compensation for problems with the rental unit, including loss of use and enjoyment. The tenant did not make a monetary claim as part of her application for dispute resolution. The tenant's application is dismissed, but she free to make a further application for dispute resolution to claim compensation.

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: June 26, 2015

Residential Tenancy Branch

