



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC (Tenants' Application)
 OPC, OPR, MNR, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlord.

The Tenants applied to cancel a notice to end tenancy for cause. The Landlord applied for an Order of Possession for cause and for unpaid rent. The Landlord also applied for a Monetary Order for unpaid rent and to recover the filing fee from the Tenants.

The male Tenant (the "Tenant") and the Landlord appeared for the hearing and provided affirmed testimony. No issues in relation to the service of the parties' Applications by registered mail were raised. The Tenant confirmed receipt of the Landlord's documentary evidence and confirmed that, other than the notice to end tenancy for cause, the Tenants had not provided any other evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to make findings in this Decision.

Preliminary Issues

During the hearing, the Landlord withdrew his monetary claim to reconsider it, as he was unclear as to how much rental arrears had accumulated during this tenancy.

Therefore, only the Landlord's request for an Order of Possession and the Tenant's Application to cancel the notice to end tenancy for cause was considered in this hearing.

Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy began on July 1, 2013 for a fixed term of one year after which it continued on a month to month basis. Rent started off at \$1,900.00 but is currently payable in the amount of \$1,950.00. The written tenancy agreement provided into evidence shows that rent is payable on the first day of each month. The Tenants paid the Landlord a security deposit of \$950.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that he personally served the female Tenant with two notices to end tenancy on May 30, 2015. The first notice, a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") was issued because the Tenants are alleged to have repeatedly paid rent late during the tenancy. The effective date on the 1 Month Notice is July 1, 2015. The second notice, a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") has a vacancy date of April 29, 2015 due to unpaid rent in the amount of \$1,950.00 payable on May 1, 2015. Both notices were provided into written evidence.

The Tenant confirmed receipt of the 1 Month Notice on May 30, 2015 but denied receipt of the 10 Day Notice. The Tenant explained that he had disputed the 1 Month Notice on June 8, 2015. The Tenant submitted that if he had received a 10 Day Notice as the Landlord had testified, then he certainly would have disputed the 10 Day Notice at the same time.

I asked the Landlord to provide evidence on the 1 Month Notice. The Landlord testified that the Tenants had habitually paid their rent late during this tenancy and that the Landlord was now tired of having to pursue the Tenants each month for rent payment that was due on the first of each month under the tenancy agreement. The Landlord testified to the following dates the Tenants had paid rent during the last year of the tenancy:

June 2014	Rent paid on June 28, 2014
July 2014	Rent paid in advance on time in full on June 28, 2014

August 2014	Rent paid in full on August 9
September 2014	Rent paid in full on September 13
October 2014	Rent paid in full on October 14
November 2014	Rent paid in full on November 19
December 2014	Rent paid in advance on time in full on November 19
January 2015	Rent paid in full on January 10
February 2015	Rent paid in full on February 13
March 2015	No rent was paid
April 2015	No rent was paid
May 2015	Rent was paid in the amount of \$3,000.00 on May 11
June 2015	Rent paid on time in full
July 2015	No rent was paid

In response to the above testimony of the Landlord, the Tenant acknowledged that he was late paying rent for June, September and November 2014. The Tenant testified that he provided the Landlord with a postdated cheque for August 2014 rent which the Landlord did not cash until August 9, 2014; however, the Tenant acknowledged that it may have been paid late. The Tenant testified that for October 2014 rent, he informed the Landlord to hold off cashing the rent cheque as he did not have sufficient funds in his account to pay rent for that month.

The Tenant disputed the Landlord's testimony that he had paid rent late for January 2015. For February 2015 rent, the Tenant testified that he again had asked the Landlord to hold off on cashing his rent cheque because he did not have sufficient funds to pay rent on time.

The Tenant testified that he paid the Landlord full rent in cash on March 1, 2015. When the Tenant was asked whether he had a receipt for this amount, the Tenant testified that the Landlord failed to provide him one. The Tenant testified that he had only paid \$900.00 for April 2015 rent. However, on May 11, 2015 he paid the Landlord full rent for May 2015 and \$1,050.00 to cover for outstanding rent for April 2015. The Tenant confirmed that he had not paid any rent to the Landlord for July 2015. The Landlord disputed the Tenant's testimony in relation to payments the Tenant claimed he had made in cash for March and April 2015.

Analysis

I have examined the 1 Month Notice and I find that the contents of the Notice complied with Section 52 of the Act. I accept the Tenants received the 1 Month Notice on May 30,

2015 and applied to dispute it on June 8, 2015. Therefore, I find that the Tenants disputed the Notice within the ten day time limit provided by Section 47(4) of the Act.

Under Section 26 of the Act and the signed tenancy agreement, the Tenants were required to pay the rent on the day it was due, here that was the first day of the month. Policy Guideline 38 to the Act states, in part:

“The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

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.”

[Reproduced as written]

Based on the evidence of the parties, I find that in the last 12 months, the Tenants paid rent at least six times which the Tenant did not dispute. Although, the Tenant disputed the Landlord’s evidence in relation to other months where the rent was claimed to be paid late, I find that six months of late rent payments are sufficient for me to determine that the Tenants were repeatedly late paying rent. Furthermore, I find that the late payments are not sufficiently far apart to conclude the Tenants were not repeatedly late paying rent.

Based on the foregoing, I find that the Tenants are not entitled to cancel the 1 Month Notice. As the Tenants are still occupying the rental unit, and the effective date of the 1 Month Notice has now passed, and the Tenants have not paid any rent for July 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants. The Tenants must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenants fail to vacate the rental suite. Copies of this order are attached to the Landlord’s copy of this Decision.

As the tenancy has been ended under the 1 Month Notice, I declined to make any legal findings on the 10 Day Notice as this is now a moot issue.

The Landlord paid a \$100.00 filing fee to make the Application. As I only dealt with the Landlord's Application for an Order of Possession which the Landlord was successful in obtaining, and the Landlord withdrew his monetary claim, I only award the Landlord \$50.00 for the recovery cost of the filing fee. Pursuant to Section 72(2) (b) of the Act, the Landlord may deduct \$50.00 from the Tenants' security deposit at the end of the tenancy to achieve this relief.

Conclusion

I find the Tenants have been repeatedly late paying rent and that the 1 Month Notice is valid and should not be cancelled. Therefore, I dismiss the Tenants' Application without leave to re-apply and grant the Landlord an Order of Possession, effective two days after service on the Tenants.

The Landlord withdrew his monetary claim and is at liberty to re-apply. The Landlord is allowed to recover half of his filing fee from the Tenants' security deposit.

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: July 29, 2015

Residential Tenancy Branch

