



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, CNR, DRI, FF
For the landlord: OPC, OPR, MNSD, MNDC, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), for an order cancelling the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), to dispute an additional rent increase, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the 1 Month Notice and 10 Day Notice, for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, there were no issues raised regarding the service of the other's application or their evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant's application dealing with a dispute of an additional rent increase is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for that relief, with leave to reapply.

The hearing proceeded only upon the tenant's application to seeking cancellation of the 2 Notices issued by the landlord and on the landlord's application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notices?

Is the landlord entitled to an order of possession for the rental unit based upon his Notices, to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted into evidence shows that this 1 year, fixed term tenancy began on February 1, 2015, and monthly rent is \$700.00, due on the first day of the month. Besides requesting an order of possession for the rental unit, the landlord made a monetary claim of \$3600.00, for alleged rent deficiencies and the rent for September 2015.

Landlord's evidence-

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the 1 Month Notice.

The landlord submitted that the tenant was served the 1 Month Notice on July 17, 2015, by hand delivering the document to the tenant.

The Notice explains that the tenant had 10 days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 10 days, then the tenant was conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move out date listed on the Notice was August 31, 2015. The landlord submitted a copy of the Notice.

The tenant filed an application to dispute the Notice within the required 10 days.

The cause as stated on the Notice alleged that the tenant is repeatedly late in paying rent.

In support of his Notice, the landlord testified that the tenant has paid rent late in April, June, and July 2015. Into evidence the landlord supplied receipts showing payment of the April rent on April 2, the June rent on June 2, and the July rent on July 3, 2015.

As to the 10 Day Notice, the amount listed as unpaid rent was \$375.00, which the landlord claimed the tenant owed for extra occupants and the tenant's pet. There was

no allegation that the monthly rent for July had not been paid and no term in the written tenancy agreement showing extra rent for additional occupants.

Tenant's response-

The tenant did not offer rebuttal to the landlord's allegations that the monthly rent for the months mentioned by the landlord was late; however, the tenant submitted that the landlord was agreeable to the payments as it was not always possible to pay the rent on the first day of the month due to her work hours.

The tenant submitted that there were never any additional occupants in the rental unit, only short term guests.

Analysis

Landlord's application-

Section 47(1)(b) of the Act authorizes landlords seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions.

I find the landlord established, through oral and documentary evidence, that the tenant has made at least three late payments of rent since the tenancy began in February 2015, and that the latest late payment resulted in the landlord's Notice being issued to the tenant.

I therefore find the landlord submitted sufficient evidence to establish that the tenant was repeatedly late in paying rent when the Notice was issued to the tenant.

As I have found that the landlord submitted sufficient evidence to support his 1 Month Notice, I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service of the order on the tenant, and this order is enclosed with the landlord's Decision, pursuant to section 55 of the Act.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order of possession after it is served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

I allow the landlord recovery of his filing fee of \$50.00, and as the landlord has claimed against the tenant's security deposit, I direct him to withhold the amount of \$50.00 from the tenant's security deposit in satisfaction of his monetary award.

As I have granted the landlord's application for an order of possession for the rental unit based upon the 1 Month Notice, I declined to consider the merits of the landlord's application pertaining to the 10 Day Notice. If there are any outstanding unpaid rent issues, the landlord is at liberty to reapply for that matter.

Tenant's application-

As I have granted the landlord's application and granted him an order of possession for the rental unit based upon the 1 Month Notice, I dismiss the tenant's application seeking cancellation of the Notice, without leave to reapply.

Conclusion

The landlord has been granted an order of possession for the rental unit.

The tenant's application is dismissed.

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: September 8, 2015

Residential Tenancy Branch

