



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 4, 2015 to cancel a notice to end tenancy for repeatedly late payment of rent and putting the Landlord’s property at significant risk.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as calling two witnesses. The Tenant appeared for the hearing with an advocate; however, only the Tenant’s advocate made submissions on behalf of the Tenant.

The Landlord confirmed receipt of the Tenant’s Application and the Tenant’s documentary evidence prior to the hearing. The Landlord’s agent also confirmed that she had not provided any evidence prior to the hearing and was relying on her oral testimony, the Tenant’s documentary evidence, and her witness evidence for this hearing.

The Tenant’s advocate confirmed that the Tenant had received a 1 Month Notice to End Tenancy for Cause (the “Notice”) on August 28, 2015, which was posted to the Tenant’s door. Therefore, I determined that the Tenant had made the Application to dispute the Notice within the 10 day time limit imposed by Section 47(4) of the *Residential Tenancy Act* (the “Act”).

Both parties provided extensive evidence on the Tenant’s repeatedly late payment of rent during this tenancy. The Tenant’s legal advocate pointed out that the multiple dates the Landlord’s agent and witnesses were relying on as evidence the Tenant had paid late rent during this tenancy were not accurate. This is because the Landlord’s agent was relying on a rent ledger which only reflected dates the Tenant’s cash payments were deposited into their bank account rather than the date the Tenant had paid rent.

Instead, the Tenant’s advocate relied on cash rent receipts issued to the Tenant during this tenancy as more reliable evidence of when the Tenant had made rent payments. However, the Tenant’s advocate acknowledged that in the past year the Tenant had made three late rent payments on the following dates: January 9, 2015; February 2, 2015; and July 3, 2015. The Tenant’s rent receipts confirmed these dates.

The Landlord's agent did not dispute these dates and the parties agreed that rent in this tenancy was payable on the first day of each month. The Tenant's advocate took some time to consult with the Tenant on how to proceed with the Tenant's Application. The Tenant's advocate then proposed to end the tenancy by way of mutual agreement. The Landlord considered the Tenant's proposal and took some time to consult with the owner of the rental unit.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties discussed the offer, turned their minds to compromise and decided to end the tenancy mutually on January 31, 2016 at 1:00 p.m. This is contingent on the Tenant paying rent on time for the duration of the tenancy in the amount of \$600.00 per month. The Landlord is issued with an Order of Possession which is effective for this date and time. This order may be enforced through the Supreme Court of British Columbia as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

However, the parties are still able to pursue remedies under the Act to end the tenancy earlier than this date if there are breaches of the Act, such as nonpayment of rent. The Landlord is able to pursue a monetary claim against the Tenants for any unpaid rent outstanding for this tenancy. The parties confirmed the voluntary nature of this agreement both during and at the conclusion of the hearing.

Conclusion

The Tenant's Application to cancel the Notice is dismissed because the parties mutually agreed to end the tenancy on January 31, 2016. As the parties agreed to end the tenancy on a mutual basis, I also dismiss the Tenant's Application to recover the filing fee from the Landlord. 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: November 12, 2015

Residential Tenancy Branch

