



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenants seeking an order to set aside a One Month Notice to End Tenancy for Cause and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Are the tenants entitled to have the notice set aside?

Are the tenants entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on or about January 1, 2014. Rent in the amount of \$896.52 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$435.00. The tenants later provided a pet deposit of \$436.25 as they obtained a dog.

The landlord gave the following testimony. The landlord issued a One Month Notice to End Tenancy for Cause on October 27, 2015. The landlord stated that they issued the notice on the basis that the tenants were repeatedly late in paying their rent and their portion of the utilities as per the tenancy agreement. The landlords stated that during a twelve month period preceding the issuance of the notice, the tenants were late with either the rent or utilities, and sometimes both, 10 times.

The landlord stated that they issued numerous e-mails reminding the tenants of their obligation to pay the rent and utilities on time as well as three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities in June 2015, July 2015 and August 2015. The landlords stated that they also reminded the tenants of their obligations on numerous

occasions in person. The landlords stated that they did not at any time approve of late payments or advise the tenants that it was fine to do so. The landlords stated that they wish to end the tenancy and request an order of possession.

The tenants gave the following testimony. The tenants stated that they acknowledge the late payments of rent and do not dispute that portion of the landlords' testimony or documentation. The tenants stated that they do dispute receiving the notices to end tenancy for unpaid rent. The tenants stated that they believe the landlord did not exercise their rights as landlords as per Residential Tenancy Policy Guideline 11 and that implied waiver applies in this case.

Analysis

The tenant does not dispute the numerous late payments of rent or utilities as alleged by the landlord. However, the tenant feels that implied waiver applies as the landlords have not exercised their rights for this issue.

I do not agree with the tenants' position. As per Policy Guideline 11, the conduct of the landlord must be considered to determine whether implied waiver applies. It is clear to me that the landlords did not waive their rights at any time. The documentation along with their testimony clearly shows that they at no time encouraged, authorized or agreed to allow the late payments of rent or utilities. I find that there was no implied waiver in this case.

Policy Guideline 38 addresses the issue before me as follows.

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.

Based on the above, the landlord has provided sufficient evidence to uphold the Notice to End Tenancy. The landlord's written and oral application for an order of possession pursuant to Section 55 of the Act is granted. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The Notice issued on October 27, 2015 remains in full effect and force.

The landlord has advised that the tenant has paid this month's rent, accordingly the order of possession will take effect at 1:00 p.m. on January 31, 2016.

The tenants were not successful in their application.

Conclusion

The tenant's application is dismissed. The tenancy is terminated. The landlord is granted an order of possession.

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: January 06, 2016

Residential Tenancy Branch

