



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDC CNC OLC FF

Introduction

This hearing was convened pursuant to applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy as well as for monetary compensation. The landlord applied for an order of possession pursuant to the notice to end tenancy and monetary compensation. The tenant and the landlord participated in the teleconference hearing.

The landlord confirmed that he received the tenant's application and evidence. The tenant stated that she did not receive the landlord's application. The Canada Post website shows that the landlord's package was delivered on December 4, 2015. However, the landlord did not choose the signature option, and I therefore could not verify whether it was the tenant who received the package. I therefore dismissed the landlord's application with leave to reapply.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy for cause dated October 28, 2015 valid?
If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on December 1, 2014. The tenancy agreement is silent as to what day of the month rent is due.

On October 28, 2015 the landlord served the tenant with a notice to end tenancy for repeated late payment of rent.

The landlord stated that rent is due on the first day of each month, and the tenant has been late with the rent on several occasions. The landlord pointed out that the tenant's own evidence shows that she paid rent late for March, May and September 2015. The landlord stated that the tenant was also late in paying rent for December 2015 and had not yet paid January 2016 rent. The landlord stated that in an email the tenant acknowledged rent was "late" and therefore implied that she knew rent was due on the first day of the month.

In the hearing the landlord orally requested an order of possession.

The tenant acknowledged that she generally paid rent on or around the first day of each month. The tenant stated that she had not paid January 2016 rent because the landlord served her with a notice to end tenancy for landlord's use, and under the Act she is entitled to withhold her last month's rent. The tenant denied acknowledging in her email that rent was due on the first of the month. The tenant submitted a copy of a reference letter the landlord wrote for her, in which the landlord wrote that the tenant pays her rent on time. The tenant stated that this shows she was not "late" paying her rent, in the landlord's opinion. The tenant stated that on some occasions the rent was only one or two days late, and that was usually when the first day of the month fell on a weekend.

Analysis

I find that the notice to end tenancy is valid.

Upon consideration of the evidence, I find that the tenant understood rent to be due on the first day of each month, as she has presented evidence that shows she attempted to pay rent on or close to the first day of each month. If the first day of the month falls on a weekend or holiday, the tenant must still take steps to ensure that the rent is paid on or before the first day of the month.

I find that the tenant was late paying rent on at least four occasions in 2015, in the months of March, May, September and December 2015. I find that the tenant was repeatedly late paying rent within the meaning of the Act.

As I find that the notice to end tenancy is valid and in the hearing the landlord requested an order of possession, I accordingly grant the order of possession, pursuant to section 55 of the Act.

As the tenant's application to cancel the notice to end tenancy was not successful, I find that she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The landlord's application is dismissed with leave to reapply, and the tenant's monetary claim is also dismissed with leave to reapply.

The remainder of the tenant's application is dismissed.

I grant the landlord an order of possession effective two days from service. 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.

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 11, 2016

Residential Tenancy Branch

