



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. Both parties confirmed receipt of the notice of hearing package. The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. I find that the tenant has properly served the landlord with the notice of hearing package and the submitted documentary evidence as per section 89 of the Act.

Preliminary Issue

The tenant stated that he did not receive the landlord's documentary evidence. The landlord stated that the documentary evidence package was served to the tenant via Canada Post Registered Mail on January 9, 2016 but indicated that the package was returned by Canada Post as unclaimed after notice card(s) were left of the attempted deliveries at the rental address. The landlord confirmed that the complete package was returned as unclaimed at the end of January 2016. The tenant stated that he has been under health issues that prevented him from picking up the package. I find based upon the undisputed affirmed testimony of both parties that the landlord has properly served the tenant with the submitted documentary evidence and is deemed served with the package 5 days later as per section 90 of the Act.

At the outset the tenant asked that his brother speak on his behalf as his agent. The landlord did not dispute this request.

It was clarified with both parties that the named landlord, T.H. was an agent of the landlord as well as the landlord's agent, J.H. Both parties did not dispute this clarification.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began on April 1, 2002 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 31, 2002. The monthly rent was \$740.00 payable on the 1st day of each month and a security deposit of \$370.00 was paid. Both parties agreed that this tenancy has been ongoing for approximately 13 years.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated December 13, 2015 which displays an effective end of tenancy date of January 31, 2016 and one reason for cause noted as:

Tenant is repeatedly late paying rent.

The landlord stated the tenant was late paying rent on three occasions which are:

- June 3, 2015
- September 2, 2015
- November 3, 2015

The landlord relies upon submitted copies of:

- A handwritten note by the tenant dated June 15 confirming late rent for June 2015.
- A 10 Day Notice dated September 2, 2015.
- A 10 Day Notice dated November 3, 2015.

The tenant confirmed in his direct testimony that rent was paid late on those three occasions after 13 years of tenancy.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On December 13, 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent;

The tenant confirmed receipt of the 1 Month Notice by finding it posted to the rental unit door on December 13, 2015. The landlord has provided undisputed affirmed testimony that the rent was repeatedly paid late on 3 occasions listed as June 3, 2015, September 2, 2015 and November 3, 2015. The tenant has confirmed in his direct testimony that rent was paid late on these three occasions.

Residential Tenancy Branch Policy Guideline #38 states in part:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² 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...

I find based upon the undisputed affirmed testimony of both parties that the landlord has met the burden of their reason for cause. The tenant has confirmed in his direct testimony that rent was paid late on all three occasions as listed by the landlord. Policy Guideline #38 clearly states that three late payments are the minimum number sufficient to justify a notice.

The tenant's application to cancel the 1 Month Notice dated December 13, 2015 is dismissed. The 1 Month Notice is upheld. As the effective end of tenancy date of January 31, 2016 has passed, the landlord is granted an order of possession effective 2 days after service.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated December 13, 2015 is upheld.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 10, 2016

Residential Tenancy Branch

