



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing was scheduled in response to the tenants' application for cancellation of a notice to end tenancy for cause. Both parties attended and gave affirmed testimony. During the hearing the landlord's agent (the "landlord") confirmed that an order of possession is sought in the event the tenants' application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on February 01, 1990. The agreement provides that monthly rent is due and payable in advance on the first day of each month. The monthly economic rent for the unit is currently \$1,235.00, while the tenant's portion is currently \$880.00.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 22, 2016. The notice was served by way of enclosure with a letter to the tenant, which is also dated January 22, 2016. A copy of the letter and the notice were submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 29, 2016, and the reason identified on the notice in support of its issuance is as follows:

Tenant is repeatedly late paying rent

Documentary evidence submitted by the landlord also includes copies of several 10 day notices to end tenancy for unpaid rent, which were issued to the tenant during the

period from 2010 to 2015. Additionally, evidence includes copies of 3 separate letters to the tenant, in which the landlord addresses a pattern of late payment of rent.

In the first letter dated July 09, 2012, the landlord notes that “rent has been received after the 1st day of the month at least eleven different times in 2011, and that since January 1, 2012 your rent has been received after the 1st day of the month on five different times.” Further, in this letter the landlord advises the tenant, in part, as follows:

Your tenancy agreement (clause 3 a) stipulates that rent must be paid in advance, no later than the first day of the month. In recent months the consistent pattern of late payment that has developed for your account is unacceptable.

Continued late payment of rent is a breach of your tenancy agreement and if this pattern continues may result in a “One Month Notice to End Tenancy” for consistent late payment of rent.

Subsequent to the above letter, the landlord corresponded with the tenant by letter dated April 04, 2014, noting in part:

We note that your rent has been received after the 1st day of the month in January, February, and April 2014.

Continued late payment of rent is a breach of your tenancy agreement and if this pattern continues may result in a “One Month Notice to End Tenancy” for consistent late payment of rent.

Thereafter, by letter dated September 10, 2015 the landlord again corresponded with the tenant. The nature and thrust of this letter is similar to the nature and thrust of the above 2 letters, in part, as follows:

We note that your rent has been received after the 1st day of the month at least 9 times in 2014 and 6 times in 2015.

Further, in this letter the landlord instructs, in part:

Continued late payment of rent is a breach of your tenancy agreement and if this pattern continues may result in a "One Month Notice to End Tenancy" for consistent late payment of rent.

Please keep your account up to date and ensure that your rent is received on or before the first day of the month from this point forward.

More recently, by letter dated January 22, 2016, the landlord advises the tenant that since the last letter, "rent has again been received late on November 26, 2015 and again this month, January." Finally, the landlord advises the tenant as follows:

Unfortunately, we can no longer accept this breach of your Tenancy Agreement. I am enclosing a 1 Month Notice to End tenancy effective February 29, 2016.

The tenant filed an application to dispute the notice on February 01, 2016. The tenant disputes that rent was paid late on some of the particular dates cited by the landlord in Tenant Ledgers, but overall acknowledges a pattern of late payment of rent for a variety of different reasons. Despite the foregoing, the tenant also claims that she has recently taken steps to ensure that, going forward, rent will be paid in a timely fashion by way of direct payment from the Ministry to the landlord.

Analysis

Section 47 of the Act provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," in part:

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 documentary evidence and testimony of the parties, I find that the landlord has met the burden of proving that the tenant has established a pattern of "repeatedly

late" payment of rent over an extended period of time. Most recently, there is no dispute that rent was also paid late for March 2016. Accordingly, the tenant's application for cancellation of the 1 month notice to end tenancy is hereby dismissed.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having reviewed the landlord's 1 month notice, I find that it is in the approved form and contains the information required by the Act. As I have dismissed the tenant's application for cancellation of the notice, I find that the landlord has established entitlement to an **order of possession**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **two (2) days** after service on the tenant, **but not effective before April 30, 2016**. This order must be served on the tenant. Should the tenant fail to comply, 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: March 16, 2016

Residential Tenancy Branch

