



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, OLC, LRE, FF, MNDC, MT

Introduction

This hearing dealt with an application by the landlord for an order of possession pursuant to a One Month Notice to End Tenancy for Cause under the Residential Tenancy Act. The tenants also filed an application seeking to have the notice to end tenancy set aside, an order to suspend or set conditions on the landlords right to enter the unit, an order to have the landlord comply with the Act, regulation or tenancy agreement, a monetary order for compensation and the recovery of 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

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about April 1, 2013. Rent in the amount of \$1535.00 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 \$750.00 and a pet deposit of \$500.00. The landlord stated that during the last 26 pay periods, the tenants have been late ten times. The landlord stated

that the tenants were given verbal warnings each time the rent was late. The landlord stated that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in July 2015, November 2015 and December 2015. The landlord issued a One Month Notice to End Tenancy for Cause on January 8, 2016 on the basis that the tenants are repeatedly late paying rent. The landlord stated that they wish to end the tenancy as soon as possible and request an order of possession.

The landlord advised that the tenants have paid the rent for the month of March.

The tenants gave the following testimony. The tenants stated that the reason the November notice was issued was because the landlord did not pick up the rent. The tenants stated that they acknowledge they have been late with the rent but not the ten times the landlord alleges. The tenants stated that they were planning on moving out at the end of June in any event. The tenants stated that they were unhappy with the way the landlord was giving notice to show the home as it is for sale.

Analysis

When a landlord issues a notice under Section 47 of the Act, they bear the burden of providing sufficient evidence to support the issuance of the notice. The landlord provided three separate notices to end tenancy for unpaid rent or utilities. The tenants gave testimony that the practice for the last “six months or so” has been that the tenants deposited the money directly into the landlords account. Based on the tenants own testimony I do not accept the tenants reason for paying the rent late in November 2015. In addition, the tenants testified that they acknowledge that they have been late in paying the rent “a few other times”.

Residential Tenancy Policy Guideline 38 addresses the matter 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.

After considering all of the testimony and documentary evidence before me, I find that there have been at least three late rental payments in the last 12 months and therefore the landlord has provided sufficient evidence to support the issuance of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. 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 tenancy is terminated.

The landlords have been successful in their application.

As I have found that the tenancy is to end, I need not consider the merits of the tenants application in regards to having the landlord comply with the Act, regulation or tenancy agreement or to set or suspend conditions on the landlords right to enter the rental unit or site, accordingly I dismiss this portion of the tenants application.

As for the tenants' application for a monetary order, the tenants are seeking \$1500.00.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants did not provide any testimony or documentary evidence to support this claim to meet the four grounds as listed above. Based on the above, I must dismiss this portion of the tenants' application.

The tenants have not been successful in their application.

Conclusion

The landlord is granted an order of possession. The One Month Notice to End Tenancy for Cause dated January 8, 2016 is confirmed. It is of full effect and force.

The tenants' application is dismissed in its entirety.

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 10, 2016

Residential Tenancy Branch

