



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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;

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. The tenants stated that the landlord was served via Canada Post Registered Mail on January 30, 2016. The landlord confirmed receipt of the tenants' notice of hearing package. The tenants did not submit any documentary evidence. The landlord stated that documentary evidence filed was served to the tenants via Canada Post Registered Mail on March 2, 2016 and confirmed received as per the submitted copy of the Canada Post Customer Receipt Tracking number. The tenants confirmed receipt of the landlord's submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants 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 the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2014 on a fixed term tenancy ending on January 31, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 13, 2014. The monthly rent is \$1,650.00 and is payable on the 1st day of each month. A security deposit of \$825.00 was paid on January 13, 2015.

On January 20, 2016, the landlord served the tenant with the 1 Month Notice dated January 18, 2016. The 1 Month Notice displays an effective end of tenancy date of February 29, 2016 and sets out that it was being given as:

- the tenant is repeatedly late paying rent;

The landlord has provided copies of six 10 Day Notices from April 2015 to January 2016 which shows that the tenants have been repeatedly late paying rent on six occasions between that 10 month period. The tenants both confirmed that due to work issues that they have been repeatedly late paying rent stating, “we totally agree”.

Analysis

I accept the undisputed affirmed evidence of both parties and find that the tenants were properly served with the 1 Month Notice dated January 18, 2016 in person on January 20, 2016.

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.

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

The landlord provided undisputed affirmed testimony that the tenants have been repeatedly late paying rent on six occasions during a 10 month period as shown by the submitted copies of the six 10 Day Notice(s).

The tenants did not dispute the landlord's claims and confirmed the contents of the landlord's claims by stating, “we totally agree”.

Residential Tenancy Branch Policy Guideline #38 states,

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 evidence of both parties that the landlord has justified the 1 reason for cause as listed on the 1 Month Notice dated January 18, 2016. The 1 Month Notice dated January 18, 2016 is upheld. The tenants' application to cancel the 1 Month Notice is dismissed. The landlord stated that she wished to end the tenancy as per her instructions from the owner and to obtain an order of possession. The landlord is granted an order of possession effective two days after service upon the tenants as the effective end of tenancy date of February 29, 2016 as passed.

Conclusion

The tenants' application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated January 18, 2016 is upheld. The landlord is granted an order of possession.

This order must be served upon the tenant(s). Should the tenants' fail to comply with this order, this 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 15, 2016

Residential Tenancy Branch

