



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On March 29, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the Notice”) be cancelled.

The matter was set for a conference call hearing at 10:30 a.m. on this date. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Did the Tenant apply on time?

Has the Tenant breached the Act or the tenancy agreement by repeatedly paying rent late?

Background and Evidence

Both parties testified that the tenancy began on October 1, 2015 on a month to month basis. Rent in the amount of \$950.00 is payable on the first of each month.

The Landlord testified that he served the Notice in person to the Tenant on March 1, 2016. The Tenant confirmed that he received the Notice on March 1, 2016, and that the Notice was in the form required by the Act.

The Tenant testified that he applied to dispute the Notice on March 29, 2016.

With respect to the Notice regarding late payment of rent, section 47 of the Act states that a Landlord may end a tenancy by giving a Notice to end the tenancy if the Tenant is repeatedly late paying rent. A Tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. If a tenant does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Section 53 of the Act states that if a Landlord or Tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to be the earliest date that complies with the section.

The Residential Tenancy policy guideline 38, with respect to repeated late payment of rent, sets out that three late payments are the minimum number sufficient to justify a notice to end tenancy.

The Landlord testified that the Tenant has been late paying the rent every month since November 2015.

The Tenant testified that he agrees with the Landlord that the rent was paid late during this period.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I dismiss the Tenant's Application to cancel the Notice dated March 1, 2016. The Tenant did not make apply for dispute resolution within 10 days of receiving the Notice. The Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

The Notice was served on March 1, 2016, and therefore the effective date of the Notice automatically changes to April 30, 2016.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

The Landlord requested that, if he is successful in this hearing, he would like an order of possession effective June 1, 2016.

I find that the Landlord is entitled to an order of possession effective June 1, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application is dismissed. I grant the Landlord an order of possession effective June 1, 2016. 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: April 27, 2016

Residential Tenancy Branch