



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

On March 23, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the Notice”) be cancelled, and to recover the filing fee for the Application.

The matter was set for a conference call hearing at 1:30 a.m. on April 25, 2016. 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

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

Has the Tenant allowed an unreasonable number of occupants in the unit?

Has the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord?

Background and Evidence

The tenancy agreement provided by the Landlord indicates that the length of the tenancy was a 1 year fixed term that began on September 5, 2015 and ends on September 5, 2016. Rent in the amount of \$1,600.00 was payable on the first of each month.

With respect to the issue in 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.

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 was late paying the rent for the months of October 2015, November 2015, and March 2016. The Landlord provided documentary evidence in the form of receipts showing the dates of late payments. The Landlord testified that the Tenant was served with the Notice for repeated late payment of rent on March 17, 2016.

The Landlord stated that the rental unit is a mortgage helper and that the mortgage is due at a certain time each month. She testified that she has the expectation that the Tenant will be responsible and not bounce cheques. She testified that the late payments of rent cause stress on her husband.

The Tenant testified that he did pay his rent late on the three occasions identified by the Landlord; however, he feels that the first late payment is related to the second late payment due to the circumstances. He submits that the two late payments should count as one event. The Tenant stated that he wrote the October 2015, rent cheque using an old cheque on a closed account. He submits that because the Landlord did not notify him until October 23, 2015, this caused him to be late paying his rent for November 2015. In the Tenant's documentary evidence he states that his rent for March 2016, was late because his payments into his account were coming in slow. He testified that he has been paying his rent in cash since March 2016, and he promised to pay rent on time, and stated that he would like to stay until the end of the fixed term of the Tenancy Agreement.

Analysis

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

I find that the Tenant was repeatedly late paying rent three times. I have considered the Tenant's explanation that the late notification to him regarding non-payment of his October 2015, rent caused him to be late for November 2015, and I do not accept that the events are connected. If the Tenant had the October 2015, rent set aside in a

different account, I do not see how that prevented him from paying the November 2015 rent on time. I find that the Tenant was late paying rent on three occasions for the months of October 2015, November 2015, and March 2016.

I dismiss the Tenant's Application to cancel the Notice dated March 17, 2016. Since the Tenancy is ending under this cause, there is no need to consider the other two issues within the Notice.

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.

I find that the Landlord is entitled to an order of possession effective April 30, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I grant the Landlord an order of possession effective April 30, 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 26, 2016

Residential Tenancy Branch