



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 an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the Act, set aside. 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 the tenant entitled to have the notice set aside?

Background and Evidence

The landlords' agent gave the following testimony:

The tenancy began on or about November 1, 2001. Rent in the amount of \$772.20 is payable in advance on the first day of each month. The agent stated that there is not a signed tenancy agreement but the rent has always been due on the first of the month and the tenant has always been aware of that. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$260.00. The agent stated that the tenant has been late in paying his rent for the months of December 2015, January 2016, March 2016 and May 2016. The agent stated that he never gave the tenant permission to pay his rent late, as he does not have the authority to do that.

The landlord stated that on May 18, 2016 a One Month Notice to End Tenancy for Cause was issued to the tenant on the grounds that the tenant is repeatedly late in paying rent. The landlord stated that the tenant made the following late payments:

December 2015 – December 4, 2015

January 2016 – January 2, 2016

March 2016 – March 4, 2016

May 2016 – May 6, 2016

The landlord stated that he requests an order of possession.

The tenant gave the following testimony. The tenant stated that he had reasonable explanations for each of the alleged late payments. The tenant stated that the landlords' agent gave him permission to pay the rent late for the months of December 2015 and March 2016. The tenant stated that he signed his January cheque on the left hand side by accident so it wasn't accepted at the bank even though the December cheque was signed on the left and accepted the month prior. The tenant stated that this is clearly a bank error and not his fault. The tenant stated that he put a stop payment on the May 2016 cheque as he knew it would "bounce" and that he issued a new cheque several days later.

The tenants counsel gave the following submissions.

Counsel submits that the landlord has not at any time prior to the issuance of the notice; advise the tenant that late rent was unacceptable. Counsel submits that the landlord could have easily warned the tenant either verbally or in writing, but chose not to. Counsel submits that the landlord has not proven that the tenant has been late in paying rent 3 times as per Residential Tenancy Policy Guideline 38 and therefore the notice should be set aside. Counsel submits that alternatively, that the doctrine of estoppel applies as the landlord has waived their rights by not informing the tenant that late payment was unacceptable.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and submissions of the tenants counsel, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the application and my findings around each are set out below.

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence for issuance of the notice. The landlord issued the notice based on the tenant repeatedly paying the rent late. Residential Tenancy Policy Guideline 38 addresses repeated late payments of rent 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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I am satisfied that the landlord has provided sufficient evidence to show that the tenant has been late in paying the rent at least three times. The landlords' agent was clear, concise and

compelling in giving his testimony that he did not give permission to the tenant to pay his rent late as he did not have that authority. In addition, the tenant acknowledged that it was his own error in signing the cheque on the left hand side causing a delay. The tenant has been writing cheques for 15 years for this tenancy so this late payment is clearly a result of the tenants actions. Furthermore, the tenant admitted that he put a stop payment on a cheque without discussing the matter with the landlord causing yet another late payment. Based on the above I find that the tenant was late in paying the four months as alleged by the landlord.

The tenants counsel submits that even if late payments are deemed to have occurred; the doctrine of estoppel should apply because the landlord has waived their rights. I do not agree with counsel. The above guideline also applies in this situation and notes that *"A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision".*

I find that the evidence before me shows that the landlord acted in a timely manner after the most recent late payment and issued a notice to end tenancy. In the tenants own testimony he acknowledged that the rent is due on the first and always has been for the fifteen years of his tenancy. Rent due date is one of the most vital, critical and material terms of a tenancy, if not the most and the tenant has been aware since the outset of this tenancy.

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. Based on the tenants long tenure and no other issues that I am aware of, I find that the order of possession is to take effect at 1:00 p.m. on July 31, 2016.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession.

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: June 30, 2016

Residential Tenancy Branch