



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF; CNC, CNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause and breach of an agreement pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties did not raise any issues with service of the dispute resolution package. The landlord objected to the tenant's late evidence; however, the landlord had time to review and respond to the evidence, on this basis, I have admitted the tenant's late evidence in spite of the late service.

Preliminary Issue – Cancellation of 10 Day Notice

The landlord agreed that the tenant paid May's rent in full by 3 or 4 May 2016. The landlord agreed that the effect of this payment was to cancel the 10 Day Notice. Accordingly, the 10 Day Notice is no longer before me.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee for this application from the landlord? Is the landlord entitled to recover the filing fee for this application from the tenant?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began November 2007. Initial monthly rent was \$850.00. Current monthly rent is \$950.00 and is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$425.00.

On 2 May 2016, the landlord served the tenant with the 1 Month Notice by posting that notice to the tenant's door. I was provided with a signed proof of service that sets out the same. The 1 Month Notice was dated 2 May 2016 and set out an effective date of 30 June 2016. The 1 Month Notice set out that it was given as the tenant was repeatedly late paying rent.

In support of the 1 Month Notice, the landlord testified that the tenant has paid rent late on multiple occasions. In particular, the landlord testified that the tenant made the following late payments:

- February 2014;
- June 2014;
- August 2014;
- December 2015 (received 3 December 2015);
- January 2016 (received 3 January 2016);
- March 2016 (received 4 March 2016); and
- May 2016 (received 3 or 4 May 2016).

The landlord issued a 10 Day Notice on 2 December 2015 for rent due 1 December 2015. I was provided with a proof of service document that sets out that the landlord served the December notice by posting it to the tenant's door. The landlord provided me with photographs of the December notice taped to the tenant's door.

The landlord issued a 10 Day Notice on 2 January 2016 for rent due 1 January 2016. I was provided with a proof of service document that sets out that the landlord served the January notice by posting it to the tenant's door. The landlord provided me with photographs of the January notice taped to the tenant's door.

The landlord issued a 10 Day Notice on 2 March 2016 for rent due 1 March 2016. I was provided with a proof of service document that sets out that the landlord served the March notice by posting it to the tenant's door. The landlord provided me with photographs of the March notice taped to the tenant's door.

The landlord testified that his practice is to check for rent in the drop box on the first and second of each month. The landlord testified that if he did not find rent on the second, he would prepare a 10 Day Notice and serve it that day.

The tenant testified that he did not receive several of the 10 Day Notices and that someone may have entered the building through the open door to take the notices from his door. The tenant testified that the landlord's father used to accept rent on the fifth; however, the tenant paid rent on the first of the month through the majority of 2015 after the landlord asked the tenant to comply with the tenancy agreement. The tenant admits that he may have paid rent after the first on a couple of occasions.

I was provided with copies of the tenant's cashed cheques. Almost all of the cheques are dated for the first of the month. The landlord submits that the tenant could have written any date on the cheques.

Analysis

On 2 May 2016, the landlord served the tenant with the 1 Month Notice by posting that notice to the tenant's door. That notice was deemed received by the tenant on 5 May 2016 pursuant to sections 88 and 90 of the Act. The 1 Month Notice set out that it was being given as the tenant is repeatedly late paying rent.

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. *Residential Tenancy Policy Guideline*, "38. Repeated Late Payment of Rent" provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b). In exceptional circumstances the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Pursuant to section 26 of the Act, the tenants have the obligation to pay their rent when it is due under the tenancy agreement. On the basis of the evidence before me, I find that the tenancy agreement provides that rent is due on the first. The landlord's father did not permanently waive enforcement of this provision by acquiescing to the tenant's late payments. When the landlord put the tenant on notice that the term would be enforced the tenant was obliged to pay rent on time.

The tenant testified that he paid his rent on time. The landlord testified to seven different occasions on which the tenant paid rent late. On balance, I prefer the testimony of the landlord. The landlord's testimony regarding his business practices was highly credible and was corroborated by photographic evidence. On this basis, I find that the tenant paid rent late seven times since 2014, four of which were in the last six months. Pursuant to paragraph 47(1)(b) of the Act, I find that the 1 Month Notice issued 2 May 2016 is valid. As such I dismiss the tenants' application to cancel the 1 Month Notice without leave to reapply. The landlord is awarded an order of possession effective 30 June 2016.

As the landlord was successful in this application, he is entitled to recover the filing fee paid from the tenant. The tenant is not entitled to recover his filing fee from the landlord.

Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant's security deposit in which case the value of the tenant's security deposit is reduced by \$100.00.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 30 June 2016. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$100.00. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: June 03, 2016

Residential Tenancy Branch