



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order cancelling a 1 Month Notice to end Tenancy for Cause issued on May 20, 2016 (the "Notice"), and an Order pursuant to section 62(3) that the Landlord comply with the *Residential Tenancy Act*, the regulations or the residential tenancy agreement.

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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Preliminary Matter

On the Tenant's Application for Dispute Resolution the Tenant incorrectly noted the address of the rental unit in that she repeated the word "Ave". Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend her application to correctly note the address of the rental unit.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the regulations or the residential tenancy agreement?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2015. Monthly rent was payable in the amount of \$579.00 payable on the first of the month. Introduced in evidence was a copy of a document titled "Attachment to Rental Contract for [address of rental unit]" wherein at paragraph 3, the parties agreed that rent was due on the first of the month and that the Tenant would pay a \$25.00 late fee in the event rent was late.

The reasons cited on the Notice were that the Tenant as repeatedly late paying rent and has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In terms of the first reason cited, the Landlord testified that the Tenant was late paying rent as follows:

- December 2015;
- January 2016;
- February 2016;
- March 2016;
- May 2016; and,
- June 2016 has not been paid in full as \$464.00 is owed for June 2016.

The Tenant also testified on her own behalf. She stated that the Landlord's evidence was correct in terms of the months she was late paying rent. She further stated that she contacted the Landlord during those times and told him to come and get the rent from her, and that he told her to put the rent in his account "the next day when the bank was open". She further stated that he had only charged her the late fee once.

The Tenant also confirmed that she owed the Landlord the sum of \$464.00.

For reasons which will be set out further in this my Decision, I did not hear evidence from the parties with respect to the second reason set out on the Notice.

Analysis

Section 47 of the *Residential Tenancy Act* provides in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline 38—Repeated Late Payment of Rent provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

In the case before me, I find that the Tenant was obligated to pay rent on the first of the month. I further find that she was late paying rent in December 2015, January 2016, February 2016, March 2016, May 2016 and June 2016. The Tenant did not dispute this evidence only to claim that it was the Landlord's responsibility to attend the rental unit to collect her rent.

As noted during the hearing, it is the Tenant's responsibility pursuant to section 26 of the *Residential Tenancy Act*, as well as the residential tenancy agreement, to pay rent when due.

Based on the foregoing, I find the Landlord has proven the Notice and has satisfied me on a balance of probabilities that the Tenant has been repeatedly late paying rent. The Tenant's application to cancel the Notice is hereby dismissed. I need not consider the other reasons cited on the Notice.

Pursuant to section 55 of the *Residential Tenancy Act*, I grant the Landlord an Order of Possession effective two (2) days after service. The Landlord must serve the Order on the Tenant and may file and enforce the Order in the B.C. Supreme Court

As the tenancy is ending, it is not necessary that I consider the Tenant's claim for an Order that the Landlord comply. That request is hereby dismissed.

The Tenant confirmed she had already moved most of her belongings to another rental unit; she further stated she would be in a position to move the balance of her items on Saturday June 25, 2016.

Conclusion

The Tenant's claim for an Order cancelling the Notice is dismissed. The Landlord is granted an Order of Possession effective two days after service.

The Tenant's claim for an Order pursuant to section 62(3) is dismissed as the tenancy is ending and the relief sought is no longer applicable.

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 22, 2016

Residential Tenancy Branch