



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 27, 2016 to: cancel a notice to end tenancy for cause; for the Landlord to make repairs to the rental unit; and for the Landlord to reduce rent for services or facilities agreed upon but not provided. The Tenant amended the Application on June 16, 2016 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Tenant and Landlord appeared for the hearing and both parties provided affirmed testimony during the hearing. The Landlord confirmed receipt of the Tenant's Application and the Tenant's amended Application. Both parties confirmed receipt of each other's documentary evidence served prior to the hearing. The hearing process was explained and the participants had no questions or issues with the proceeding instructions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party and make submissions to me.

Preliminary Issues

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that an Arbitrator may use their discretion to dismiss unrelated claims with or without leave to re-apply. At the start of the hearing, I determined that the Tenant's request was to cancel a notice to end tenancy because it is alleged by the Landlord that the Tenant was repeatedly late paying rent. The Tenant also seeks monetary relief for the alleged failure of the Landlord to complete repairs and provide him with peaceful and quiet enjoyment of the rental unit. Accordingly, I determined that the notice to end tenancy was unrelated to the remainder of the Tenant's Application. Therefore, I severed the issues and decided to only deal with the notice to end tenancy in this hearing. The Tenant's remaining Application was dismissed with leave to re-apply.

While I have considered the parties evidence relating only to the issue to the decided below, I have only documented that evidence which I relied upon to make findings in this decision.

Issues(s) to be Decided

Should the one month notice to end tenancy for repeatedly late rent payments be cancelled?

Background and Evidence

The parties agreed that this tenancy started on March 1, 2016 on a month to month basis. A written tenancy agreement was signed by the parties which requires the Tenant to pay rent in the amount of \$480.00 on the last day of each month. The Tenant paid a security deposit of \$240.00 on February 19, 2016 which the Landlord still retains.

The Tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause (the "Notice") dated May 21, 2016 which was posted to his door. The Tenant testified that he received this about a day or two after it was posted. The Notice was provided into evidence and shows a vacancy date of June 30, 2016 and the reason for ending the tenancy is because the Tenant is alleged to have repeatedly pay rent late.

The Landlord was asked to provide evidence and testimony around the rent payments. The Landlord testified that prior to the tenancy starting on March 1, 2016 the Tenant was required to pay the first installment of rent. However, the Tenant failed to pay rent and made the payment of \$480.00 by email transfer on March 4, 2016.

The Landlord testified that the second rent payment was due on March 31, 2016. However, the Tenant texted the Landlord on April 1, 2016 stating that he had left a cheque for the Landlord under his door mat. The Landlord retrieved the cheque, which was provided into evidence and showed a date of April 1, 2016, and deposited it into his account using his cell phone.

The Landlord testified that the third rent payment was due on April 30, 2016 for May 2016 rent. On this occasion, the Tenant provided the Landlord with a cheque on April 29, 2016 and informed him by text message that the payment had been provided to him. The Landlord cashed the cheque on May 1, 2016. However, on May 4, 2016 the Landlord's bank informed him that the cheque was being returned to him because the Tenant's account had insufficient funds. The Landlord testified that he then served the Tenant with a notice to end tenancy for unpaid rent on May 5, 2016 for the May 2016 rent. As a result, the Tenant then paid full rent to the Landlord on May 6, 2016.

The Landlord testified that the rent due for June 2016, which was payable on May 31, 2016, was not paid by the Tenant until June 1, 2016. Based on the Tenant making these late rent payments, the Landlord now seeks to end the tenancy.

The Tenant explained that he paid rent late for the first month of the tenancy because he had come from a different province which required payment of the first and last months' rent instead of a security deposit. The Tenant explained this late payment made by him as a gap and confusion of this province's tenancy laws and that there was a requirement for the Landlord to have apprised him of this because the Landlord was a resident of this province.

With respect to the payment for April 2016 rent, the Tenant testified that he had given payment for April 2016 rent to the Landlord on April 1, 2016 in the form of a rent cheque which the Landlord had requested. The Tenant submitted that the Landlord made no issue of the late payment when he texted the Landlord about a request to make the payment by email transfer. The Tenant argued that the Landlord collected rent from his other renters on the first of each month and therefore this should not have been an issue for him.

The Tenant argued that the third rent payment was made on time prior to the date it was due and if the Landlord had cashed the cheque on the day it was provided to him, the cheque would have cleared as the Tenant ensured that there were sufficient funds in his account. The Tenant submitted that the Landlord had the means to cash the cheque using his cell phone as he had done previously but chose to cash it the day after rent was due by which time his bank was short of the money.

In relation to rent for June 2016, the Tenant submitted that he was making attempts to get money into his bank for May 31, 2016. However, his father was assisting him with this and as his father was in another province, the funds took an additional day due to the time difference to reach the Tenant's account which is why it was made one day late. The Tenant asked the Landlord for leniency with respect to the timing of his rent payments. At the end of the hearing, I offered the parties an opportunity to have a discussion about either allowing the tenancy to continue or ending it mutually. However, neither party was willing to engage in such a discussion. Therefore, I continued to make findings on the Tenant's Application to cancel the Notice as follows.

Analysis

In examining the Notice, I find that the contents of the Notice complied with Section 52 of the Act and the manner in which it was served to the Tenant also complied with the Act. I find that the Tenant disputed the Notice within the 10 day time limit afforded under Section 47(4) of the Act. I also find that the Notice allowed for a full rental month of notice to expire before the vacancy date pursuant to Section 47(2) of the Act.

Section 26 of the Act requires a tenant to pay rent on the day that it is due. In this case, I find that the Landlord and Tenant established a written tenancy which made it clear that the Tenant had an obligation to pay rent on the **last** day of the month. Furthermore, Policy Guideline 38 to the Act states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent. 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.

In consideration of the parties’ evidence, I make the following findings. I find that when the Tenant signed the written tenancy agreement, the Tenant had a responsibility and obligation to apprise himself of the requirements of the Act and that rent was payable on the **last** day of each month for the following month. It is not the responsibility of the Landlord to inform the Tenant of his rights and obligations under a tenancy agreement. I find it difficult to understand why the Tenant thought he could pay his rent late for the first month of the tenancy based on his argument that another province requires rent for the first and last month to be paid before the tenancy starts. This is because, if the Tenant were to have followed that logical then the Landlord would still have been provided with sufficient funds to account for the first month’s rent. In this respect, I find the Tenant failed to pay the first month’s rent on time and the Tenant had a duty to know that any continuation of this practice could have jeopardised his tenancy.

Indeed, I find that the Tenant continued this practice and failed to pay rent on time for the second month of the tenancy (April 2016). I find the Tenant’s cheque dated April 1, 2016 is clear and sufficient evidence that the rent for April 2016 was not paid when it was due under the tenancy agreement which was on March 31, 2016.

With respect to the third late payment, I find that when a tenant provides a rent cheque to a landlord, the tenant must ensure that they have sufficient funds in their account to allow for the payment to clear, even though a landlord may not cash the cheque on the day rent is due.

In this case, the Tenant’s rent cheque for May 2016 was provided on time to the Landlord but when it was returned as insufficient funds, this is regarded as nonpayment and any subsequent payment made as a result of the Tenant not ensuring sufficient funds in his account, I find is to be determined as late. Had the Landlord waited an unreasonable period of time to cash the Tenant’s rent cheque and the Tenant was continually asking the Landlord to cash it, or there had been an unforeseeable bank error, then I may have turned my mind to finding that this should not be considered as late payment of rent. However, in this case, the Landlord waited one day after rent was due to cash the Tenant’s rent cheque and the Tenant had an obligation to ensure these funds were available in his account to honor that cheque.

I also find the Tenant failed to pay rent on time for June 2016, making payment on June 1, 2016 and not on May 31, 2016 as required by the tenancy agreement. I find the Landlord has presented sufficient evidence for me to conclude on the balance of probabilities that the Tenant is having difficulty in making rent payments on time. Therefore, this tenancy must end and I deny the Tenant’s request to cancel the Notice.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's application is dismissed. As I have made a finding that the Notice complies with Section 52 of the Act and the Tenant's Application to the cancel the Notice is dismissed, the Landlord must be granted an Order of Possession. This order is effective at 1:00 p.m. on June 30, 2016 in accordance with the vacancy date on the Notice. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental suite.

Conclusion

I find the Tenant has been repeatedly late paying rent and that the Notice is valid and should not be cancelled. The Landlord is entitled to an Order of Possession, effective at 1:00 p.m. on June 30, 2016 to end the tenancy.

As the tenancy is to shortly end, I dismiss the Tenant's Application for the Landlord to complete repairs to the rental unit. The remainder of the Tenant's monetary claim is dismissed with leave to re-apply.

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 29, 2016

Residential Tenancy Branch