



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, 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 its filing fee for this application from the tenants 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 tenant JS (the tenant) appeared on behalf of both tenants.

The tenant admitted service of the dispute resolution package and 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause and breach of an agreement? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 December 2010. Current monthly rent is \$1,006.00 and is due on the first.

The agent testified that the tenants were late paying their rent for January, February, March, April, May, and June of 2016.

I was provided with three 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for each of January, February and March. The 10 Day Notice for January was dated 11 January 2016. The 10 Day Notice for February was dated 9 February 2016. The 10 Day Notice for March was issued 4 March 2016.

The agent testified that when the tenants were late for April 2016, the landlord issued the 1 Month Notice.

On 8 April 2016 the landlord served the tenants with the 1 Month Notice by posting that notice to the tenants' door. The 1 Month Notice set out that it was given as the tenants were repeatedly late paying rent. The 1 Month Notice set out an effective date of 31 May 2016.

The landlord provided a copy of the receipt issued to the tenants for payment received 4 May 2016. The receipt set out that the payment was accepted on the basis of the tenants' use and occupancy only and did not reinstate the tenancy.

The landlord provided a copy of the receipt issued to the tenants for payment received 9 May 2016. The receipt set out that the payment was accepted on the basis of the tenants' use and occupancy only and did not reinstate the tenancy.

The landlord provided a copy of the receipt issued to the tenants for payment received 3 June 2016. The receipt set out that the payment was accepted on the basis of the tenants' use and occupancy only and did not reinstate the tenancy.

The agent testified that the tenants paid for their use and occupancy for the rental unit in July. The agent testified that a receipt for payment in July was issued on the basis of the tenants' use and occupancy only.

The tenant submits that the tenants have paid their rent, but are struggling.

Analysis

Subject to the presumption in subsection 47(5) of the Act, in an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

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). The landlord has issued the 1 Month Notice on the basis that the tenants have been repeatedly late paying rent.

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenants were deemed to have received the 1 Month Notice on 11 April 2016. This means that the tenants had until 21 April 2016 to apply to this Branch to cancel the 1 Month Notice. The tenants did not apply to dispute the 1 Month Notice.

The landlord has been clear that it has not waived its right to enforce the 1 Month Notice: for each payment since the issuance of the 1 Month Notice the landlord has issued a receipt informing the tenants that the payment did not reinstate the tenancy.

I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenants are presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 31 May 2016. As this date has now past, and as the tenants have paid for their use and occupancy of the rental unit for July, the landlord is entitled to an order of possession effective at 31 July 2016.

As the landlord has been successful in this application, it is entitled to recover the filing fee paid from the tenants. Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenants’ security deposit in which case the value of the tenants’ security deposit is reduced by \$100.00.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 31 July 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: July 14, 2016

Residential Tenancy Branch