



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package on June 19, 2016, just 4 days prior to the scheduled hearing date. The landlord provided testimony that she received the tenant's notice of hearing package and the submitted documentary evidence just 4 days prior to the scheduled hearing date and was only able to serve the tenant with the landlord's submitted documentary evidence in person on June 22, 2016 at the RTB Office while obtaining information about the application. The tenant provided testimony that she did not receive the landlord's late documentary evidence and disputes the landlord's claim. The tenant has disputed that the landlord did not served the tenant with the landlord's documentary evidence in person on June 22, 2016.

The hearing commenced as scheduled but was unable to be completed on this date. As both parties have filed extensive supporting documentation, an adjournment is required to allow the landlord an opportunity to respond to the application by serving the tenant with her documentary evidence. The continuation date of this hearing will be mailed along with this Interim Decision.

The hearing is adjourned. Both parties were cautioned that no further evidence would be accepted and that neither party may submit any further evidence.

On August 10, 2016 the hearing was reconvened with both parties in attendance via conference call. Both parties were given an opportunity to make submissions and present evidence.

A finding was made in which part of the tenant's application seeking an order requiring the landlord to comply with the Act, regulation or tenancy agreement and a determination regarding their dispute of an additional rent increase were dismissed with leave to reapply as they were unrelated to the main issue of the tenant's request to cancel the notice to end tenancy issued for cause. It was noted that the tenant had already applied under a separate application for these portions of her application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

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 applicant's claim and my findings are set out below.

This tenancy began on May 15, 2013 on a fixed term tenancy ending on June 15, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 9, 2013. The monthly rent was \$1,050.00 payable on the 1st day of each month. A security deposit of \$525.00 was paid on May 9, 2013.

Both parties agreed that the landlord served the tenant with a 1 Month Notice dated May 21, 2016 in person on May 21, 2016. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2016 and one reason for cause as:

Tenant is repeatedly late paying rent.

The tenant seeks an order to cancel the 1 Month Notice and the landlord seeks an order of possession to end the tenancy.

The landlord provided affirmed testimony that the tenant was repeatedly late paying rent on:

- August 8, 2015
- December 3, 2015
- January 6, 2016
- February 4, 2016
- March 5, 2016
- April 3, 2016

The landlord stated that the tenant has been repeatedly late paying rent from the beginning of the tenancy. The tenant did not dispute that she was late paying rent on those occasions as claimed by the landlord. The tenant however claimed that on 5 of the 6 occasions the tenant had tried to pay rent, but that the landlord was unavailable to receive it. The landlord disputed this claim by the tenant stating that she has been asking for post-dated cheques for some time, but that the tenant has not complied. The tenant stated that she was trying to arrange an automatic rent payment with the landlord without any success. The tenant stated that she had evidence to support her claim that the landlord was also unavailable to accept the monthly rent payment, but did not submit it for the hearing.

The landlord has submitted in support of her claim copies of 10 rent payment receipts in which she received cash payments from the tenant. The landlord reiterated that the tenant has been repeatedly late paying rent since the beginning of the tenancy and that she can no longer tolerate this and seeks an end to the tenancy.

Analysis

In an application to cancel 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.

In this case, both parties have confirmed that the landlord served the tenant with the 1 Month Notice dated May 21, 2016 for repeatedly late paying rent. The tenant has also confirmed that she was late paying rent on all 6 occasions as claimed by the landlord. However, the tenant claims that on 5 of those occasions the rent payment was late due to being unable to provide the rent to the landlord on time as the landlord was unavailable. The tenant also claims that she has tried to set up an automatic rent payment every month with the landlord without success. This claim is disputed by the landlord, who has state that the tenant has been repeatedly late paying rent since the tenancy began. The landlord has also claimed that she has requested in the past that

the tenant provide post-dated cheques to avoid further late rent issues, but that the tenant has never complied.

In this case, I find that the tenant has been repeatedly late paying rent as confirmed by both parties. I prefer the evidence of the landlord over that of the tenant in which the tenant has been repeatedly late paying rent due to her own neglect as opposed to the landlord being unavailable to accept rent payments due on the 1st of each month. As such, the tenant's application to cancel the 1 Month Notice is dismissed. The landlord's 1 Month Notice is upheld.

The tenant was required to vacate the premises by June 30, 2016 as per the 1 Month Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

Conclusion

The tenant's application is dismissed.

The 1 Month Notice is upheld. The landlord is granted 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.

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: August 10, 2016

Residential Tenancy Branch

