



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, O, MT (Tenants' Application)
 OPC, MNR, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlord.

The Tenants applied to cancel a notice to end tenancy for cause and unpaid rent. The Tenants also applied for more time to cancel the notices to end tenancy, and for "Other" issues. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenants.

The female Tenant and the Landlord appeared for the hearing and provided affirmed testimony. No issues in relation to the service of the parties' Applications and evidence prior to the hearing were raised by the parties.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to make findings in this Decision.

Preliminary Issues

During the hearing, the Landlord confirmed that she was seeking an Order of Possession because the Tenant had been repeatedly late paying rent for which she had been served with a notice to end tenancy for and for unpaid rent which remains unpaid at the time of this hearing. As a result, I amended the Landlord's Application to consider the request for an Order of Possession based on the notice to end tenancy for cause as the Tenant confirmed that she had appeared for this hearing to dispute the notice to end tenancy for cause.

The Tenant also explained that her Application for “Other” issues related to costs she had incurred during this tenancy for repairs she had made at the start of the tenancy. The Tenant was informed that she had not provided any documentary evidence around this issue, and in any case this matter was unrelated to the issue of unpaid and late rent in this tenancy. Therefore, pursuant to Rule 2.3 of the Rules of Procedure, I dismissed this portion of the Tenants’ Application with leave to re-apply.

Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy began on June 24, 2014 for a fixed term of six months after which it continued on a month to month basis. Rent started off at \$700.00 and was increased through a legal notice of rent increase to \$720.00. The increased amount was payable by the Tenants starting May 2016. The Tenants paid the Landlord a \$350.00 security deposit.

The parties confirmed that pursuant to the signed tenancy agreement the Tenants are required to pay rent on the first day of each month. The parties confirmed that the rent for the Tenants in this tenancy was being paid directly to the Landlord by a third party government organisation.

The Landlord testified that the Tenants were habitually late paying rent in this tenancy. The Landlord testified that in October 2015 the Tenants were served with a written breach letter informing them that their rent was payable in the amount off \$700.00 per month. This was done in an effort to warn the Tenants and reconfirm their obligations with regards to payment of rent under the signed tenancy agreement.

The Landlord was asked to first present evidence of late payments made by the Tenant starting in 2016. The Landlord testified that Tenants were not paying the full amount of rent by the due dates of each month and that a small residual balance was being left unpaid, for which the Landlord was having to chase the Tenants down each month. The Landlord testified that the rent for January 2016 was not fully paid until January 9, 2016. The rent for March 2016 was not fully paid on March 1, 2016 and the remaining balance of \$24.27 was not paid until March 7, 2016. The Landlord testified that an outstanding

balance of \$24.27 for April 2016 rent was not paid until April 7, 2016, and an outstanding balance of \$44.27 for May 2016 rent was not paid until May 19, 2016.

The Landlord continued to testify that for the month of June, July and August 2016, the Tenants have failed to pay \$44.27 for each month which is still outstanding. The Landlord testified that she accepted the partial payments of \$675.73 from the Tenants for the months of July and August 2016 for use and occupancy only informing the Tenants that the tenancy would not be re-instated as the Notice had been served. As a result, the Landlord confirmed that the rental arrears that she wishes to claim from the Tenant totals \$132.81 (\$44.27 x 3). The Landlord provided a number of notices to end tenancy for unpaid rent relating to some of the months detailed above that rent was not fully paid as evidence to verify her oral testimony.

The Landlord testified that she posted to the Tenant's door a 1 Month Notice to End Tenancy for Cause (the "Notice") on June 26, 2016. The Notice was provided into evidence and shows a vacancy date of July 31, 2016 due repeatedly late rent during the tenancy.

The Tenant confirmed receipt of the Notice on June 26, 2016 from the rental unit door and applied to dispute the Notice on July 5, 2016. I asked the Tenant to verify or deny the Landlord's oral testimony by going over the amounts in the Landlord's evidence. The Tenant confirmed that she had paid the outstanding balance for: March 2016 on March 7, 2016; April 2016 on April 7 or April 9, 2016; and, May 2016 on May 19, 2016. I informed the Tenant that pursuant to her evidence she had disclosed late payment of rent for the three months prior to her being issued with the Notice. The Tenant confirmed this several times during the hearing. The Tenant also confirmed that there was a balance outstanding of \$132.81 for the months of June, July and August 2016 which she had not paid because she was waiting for the outcome of this hearing.

The Tenant testified that her rent was being paid for by a third party government agency who kept reducing the payments being made to the Landlord following reviews that they were conducting.

Analysis

I have examined the 1 Month Notice and I find that the contents of the Notice complied with Section 52 of the Act. I accept the Tenants received the 1 Month Notice on June 26, 2016 and applied to dispute it on July 5, 2016. Therefore, I find that the Tenants disputed the Notice within the ten day time limit provided by Section 47(4) of the Act. As

a result, there is no need for me to consider the Tenants' Application for more time to cancel the Notice as this is not applicable.

Section 26 of the Act requires a tenant to pay rent on the day it is due under a tenancy agreement unless the tenant has authority under the Act to withhold or deduct it. In this case, the Tenants were required to pay full rent on the day it was due, here that was the first day of the month. 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."

[Reproduced as written]

Based on the evidence of the parties, I find that in the last six months of this tenancy the Tenants have been repeatedly late paying rent, despite them being given written breach letters warning of their duty to pay rent on time. A tenant is responsible for ensuring that full rent is received by their landlord on the day it is due irrespective of who makes that payment or whether the payment is being made by a third party.

I am satisfied by the undisputed evidence of the Landlord which was confirmed by the Tenant during the hearing that in the last three months prior to the Tenants being served with the Notice (March, April and May 2016), the Tenants paid their rent late during those periods. In addition, the Tenants have slipped into rental arrears for the months of June, July and August and have disclosed no authority under the Act to withhold rent causing rental arrears in the undisputed amount of \$132.81.

Based on the foregoing, I find that the Tenants are not entitled to cancel the Notice and the tenancy must end. As the Tenants are still occupying the rental unit, and the effective date of the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants. The Tenants must be served with a copy of the order. The order may then be enforced through the Supreme Court of British Columbia if the Tenants fail to vacate the rental unit.

In addition, I grant the Landlord's monetary claim in the amount of \$132.81 for the accumulated rental arrears for June, July and August 2016. In addition, I also grant the Landlord's request to recover the filing fee of \$100.00 pursuant to Section 72(1) of the Act. The total amount awarded to the Landlord is \$232.81. The Landlord is issued with a Monetary Order for this amount which is enforceable in the Small Claims Division of the Provincial Court as an order of that court.

As the tenancy has been ended under the 1 Month Notice, I declined to make any legal findings on the notices to end tenancy for unpaid rent as they are now a moot issue. Copies of the above orders are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants have been repeatedly late paying rent and the notice to end tenancy for cause is valid and should not be cancelled. Therefore, I dismiss the Tenants' Application without leave to re-apply and grant the Landlord an Order of Possession and a Monetary Order. The Tenant's Application made under "Other" issues for monetary compensation 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: August 19, 2016

Residential Tenancy Branch

