



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 665622
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by mail on July 18, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2007 as a fixed term tenancy which renewed a number of times with the latest tenancy agreement starting on July 1, 2015 for a fixed term that expired June 30, 2016 and then continued on a month to month basis. Rent is \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on September 1, 2007.

The Tenant said she lost her partner approximately a year ago which has affected her ability to pay the rent on time. The Tenant said she has lived in the rental unit almost 10 years and it is her home and she does not want to move. The Tenant continued to say she always pays the rent and any late fees but she agrees that she has been late with the rent on many occasions. The Tenant said she has tried a number of roommates to help with the rent but it has been difficult to make the roommates workout. The Tenant said she now has 3 good roommates and she is sure the rent will be paid on time from now on. The Tenant said she does not want the tenancy to end and she does not want to move.

The Landlord said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 8, 2016. The Landlord said they served the Notice to End Tenancy on July 8, 2016 by personal delivery to the Tenant. The Effective Vacancy date on the Notice is August 31, 2016. The Landlord said the Tenant is living in the unit and the Landlord requested to end the tenancy as soon as possible.

The Landlord continued to say that the Tenant has numerous late rent payments. The Landlord continued to say they have tried to work with the Tenant and there have been many promises to pay the rent on time but the promises have not worked out. As a result the Landlord said they issued the 1 Month Notice to End Tenancy for Cause with the reason of repeatedly late with rent payments. The Landlord submitted the rent payments ledger which indicated 12 of the last 13 rent payments were late.

The Tenant said she agreed many of the rent payments over the last year have been late but the rent was always paid and she did explain the situation to the Landlord.

The Landlord said they have followed the Act and the correct process and they would like to end the tenancy as soon as possible, but as the Tenant paid the September, 2016 rent on time the Landlord said he is requesting the tenancy to end on September 30, 2016.

The Tenant said in closing she understands she has been late with the rent payments on many occasions but the rent has always been paid and she has been a good tenant for approximately 10 years. The Tenant said this should count for something.

The Landlord said in closing the Tenant has been repeatedly late on all the rent payments over the last year and they want to end the tenancy on September 30, 2016.

Analysis

Section 26(1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As well: **Section 47** of the Act says a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

(b) the tenant is repeatedly late paying the rent

Paying the rent on time is one of the fundamentals of all tenancy. The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. The Tenant has given testimony that she has been late on many rent payments over the last year. The Landlord gave testimony and submitted the rent ledger that supports the Landlord's claim that the Tenant's rent payments have been late 12 of the last 13

months. I find the Tenant has not established grounds to be granted her request for an order to cancel the 1 Month Notice to End Tenancy dated July 8, 2016. The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply. The Landlord's 1 Month Notice to End Tenancy for Cause dated July 8, 2016 stands in effect. Consequently I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect September 30, 2016.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective September 30, 2016, at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: September 06, 2016

Residential Tenancy Branch