



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, FF

Introduction

This was a cross-application hearing.

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on August 2, 2016 and to recover the filing fee cost from the landlord.

The landlord has applied requesting an order of possession based on the Notice to end tenancy disputed by the tenant and to recover the filing fee cost from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed receipt of all evidence supplied by each. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on August 2, 2016 be cancelled or must the landlord be issued an Order of possession?

Background and Evidence

The tenancy commenced on February 1, 2014. Rent is due on or before the first day of each month. A copy of the signed tenancy agreement was supplied as evidence. The landlord is holding a security deposit in the sum of \$665.00.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on September 2, 2016.

The reasons stated for the Notice to End Tenancy were that the tenant has been repeatedly late paying rent.

The landlord provided the following rent payment dates in 2016:

- July 12; June 9 and 20; April 12 (April and March rent); February 18; and January 14.

The landlord submitted a copy of the tenant ledger indicating payments made. Copies of 10 day Notices to end tenancy for unpaid rent issued on July 8, June 8 and April 5, 2016 were supplied as evidence. The landlord submitted copies of late payment notices issued to the tenant on February 10, March 7; May 16; June 6; July 7; 2016. Those notices provided the current rent arrears and a reminder that rent was due on the first day of every month. The tenant was warned eviction for unpaid rent could proceed.

The tenant said that he has always paid his rent and the landlord accepted it. The tenant did not dispute the rent payments dates set out by the landlord and acknowledged receipt of the eviction Notices and warnings issued in writing. The tenant said the landlord always told him they did not want to evict him and that their repeated failure to do so in the past now relieves the tenant from the rent payment due date indicated on the tenancy agreement. By allowing the tenant to pay rent as he has; dating back before 2016, the landlord cannot now rely on the rent due date term of the tenancy agreement.

The tenant said that the one month Notice to end tenancy was followed closely by a petition he submitted to the landlord regarding sounds made by the garage door, pedestrian door and garbage bin wheels. A copy of the petition was supplied as evidence. The tenant said that the landlord is now motivated to evict him.

The landlord said that they have over 2,000 occupants in the complex and they face all kinds of complaints and angry tenants. The eviction Notice has nothing to do with the petition the tenant presented to them. The landlord said they issued 10 day Notices to end the tenancy but had acknowledged the tenant was late in paying the rent and gave him multiple chances to stop paying his rent late.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

Residential Tenancy Branch (RTB) policy suggests 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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision. Policy suggests that only in exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

I have considered the tenants' submission that the landlord is essentially estopped from relying on the rent payment term contained in the tenancy agreement and I have rejected that argument. The landlord has not conducted themselves in any manner that could reasonably lead the tenant to believe his rent was not due on or before the first day in the month. In fact the tenant was issued repeated Notices to end the tenancy and warnings informing him the rent was due by the first day of each month. I do not accept that there could have been any confusion on the part of the tenant that his rent was due on or before the first day of each month. The landlord may well have sympathized with the tenant, but they did not waive their right to rent payments as set out on the tenancy agreement.

Therefore; I find that in the past nine months the tenant has been late paying rent for seven of those months. As a result I find that the one month Notice ending tenancy issued on August 2, 2016 is of force and effect.

Section 53 of the Act provides, in part:

53 *(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

As rent is due on or before the first day of each month I find that the effective date of the Notice is changed to September 30, 2016.

Therefore, pursuant to section 55(2)(a) of the Act I find that the landlord is entitled to an order of possession that is effective at 1:00 p.m. on September 30, 2016. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of the Court.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution. That sum may be deducted from the security deposit held in trust by the landlord.

The tenants' application is dismissed.

Conclusion

The landlord is entitled to an order of possession.

The landlord is entitled to filing fee costs which may be deducted from the security deposit.

The tenants' application is dismissed.

This decision is final and binding and 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 22, 2016

Residential Tenancy Branch