



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENDEB PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for compensation in the amount of \$25,000.00 and for the recovery of the filing fee.

Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing the tenant withdrew her application for compensation. Therefore this hearing only dealt with the tenant's application to cancel the notice to end tenancy and for the recovery of the filing fee.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on December 15, 2003. The current rent is \$700.00 due on the first of the month.

On July 27, 2016, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reason;

- Tenant is repeatedly late paying rent

The landlord stated that the tenant is consistently late paying rent and cited examples to support her testimony. In July 2015, the tenant paid partial rent on July 01 and then paid the balance on July 10, 2015. In December of that year the tenant also paid partial rent on December 01 and paid the balance on December 18, 2015.

The landlord stated that it is a regular practice for the tenants of the apartment building to place their rent cheques into the landlord's mail box on or before the first of each month. The landlord retrieves the cheques on the first of each month and takes them to the bank to be deposited.

This year, the tenant placed rent cheques for the months of February and March into the landlord's mailbox, on the first of each month but postdated them to February 05, 2016 and March 04, 2016. The landlord stated that she was unable to deposit the cheques on the first of these months and accordingly rent was paid late in February and March 2016.

The tenant did not dispute the landlord's testimony and agreed that she had provided late rent for all the months that the landlord testified to. The tenant's rebuttal was that at one time she had the permission of the assistant manager to postdate rent cheques. The landlord stated that this happened a few years ago and that the permission was a one-time approval.

The landlord stated that she verbally informed the tenant that postdated cheques were not acceptable but the tenant denied having received any verbal warnings. The tenant also informed me that the landlord did not charge the \$25.00 late fee and therefore she understood that postdated cheques were acceptable.

Analysis

In order to support the notice to end tenancy, the landlord must prove that one or more of the reasons for the notice to end tenancy applies. Based on the testimony of both parties, I find that the tenant was late paying rent on at least three separate occasions.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Since July 2015, the tenant was late paying rent at least four times. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has proven the reason for the notice to end tenancy, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

Since the tenant has not proven her case, she must bear the cost of filing this application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective at 1:00 pm on November 01, 2016.

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 23, 2016

Residential Tenancy Branch