



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession based on a notice to end tenancy for cause, for a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant. The Landlords amended the Application to increase the monetary claim.

The female Landlord and the Tenant appeared for the hearing and provided affirmed testimony. 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.

Preliminary Issues

The Tenant confirmed receipt of the Landlords’ Application but denied receipt of the Landlords’ amended Application to increase the monetary claim. The Landlord confirmed that they had not served the Tenant with the amended Application for the increased monetary claim. The Tenant confirmed that she had not served her documentary evidence to the Landlord prior to this hearing.

As a result, I informed the parties that I would not be considering the Tenant’s documentary evidence or the Landlords’ amended Application that was provided only for this file but was not before the parties. However, I did not prevent the Tenant from referring to her documentary evidence by oral testimony only.

During the hearing, the parties made initial submissions with regards to the Landlords’ monetary claim. The Landlord presented the property manager for this tenancy to provide witness evidence during the hearing in respect to the Landlords’ monetary claim. However, the Landlord withdrew the monetary claim in order to allow both parties

and the property manager an opportunity to settle the amount of unpaid rent outstanding in this tenancy by mutual agreement. In this respect, both parties submitted that they had documentary evidence which supports the disputed amount of outstanding rent which was not before me. Based on the foregoing, I informed the parties that the Landlords would be at liberty to re-apply for rental arrears in this tenancy if they were not able to resolve the amount owed by mutual agreement. No objections were raised in relation to this course of action. Therefore, only the Landlord's request for an Order of Possession and recovery of the filing fee is dealt with in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy began on March 15, 2016 for a fixed term of one year due to expire on March 15, 2017. The signed tenancy agreement shows that the Tenant is required to pay rent in the amount of \$925.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$462.50 on March 7, 2016 which the Landlords still hold in trust for the Tenant.

The Landlord testified that the Tenant paid her rent to the property manager directly and that the Tenant paid rent habitually late in this tenancy. The Landlord testified that the Tenant paid rent late for April, May, June and July 2016. The Landlord testified that in addition, the Tenant owes rental arrears for June and July 2016 and has not paid any rent for August, September and October, 2016.

The Landlord testified that on August 16, 2016, the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") by posting it to the Tenant's door with a witness. The 1 Month Notice was provide into evidence and shows a vacancy date of September 17, 2016. It was issued to the Tenant because she is alleged to have repeatedly paid rent late during the tenancy.

The Tenant confirmed receipt of the 1 Month Notice posted on her door on August 18, 2016. The Tenant disputed the Landlords' evidence in relation to the late payments made. However, the Tenant confirmed that she had made late payment of rent to the Landlords for June and July 2016. The Tenant also explained that she had not paid rent for October 2016 because she needed the money just in case she was evicted. The Tenant confirmed that she had not disputed the 1 Month Notice despite having read and understood both pages of the 1 Month Notice that was served to her.

Analysis

I have examined the 1 Month Notice and I find that the contents complied with Section 52 of the *Residential Tenancy Act* (the “Act”). I accept the Tenant received the 1 Month Notice on August 16, 2016 which was posted to her door in accordance with Section 88(g) of the Act.

Section 47(2) of the Act requires that the time period a 1 Month Notice becomes effective must be for a period of one full rental month. As a result, the vacancy date detailed on the Notice is corrected from September 17 to September 30, 2016 pursuant to Section 53 of the Act.

Sections 47(4) and (5) of the Act explain that if a tenant fails to make an Application to dispute a 1 Month Notice within ten days after receiving the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the effective date of the 1 Month Notice. This is also clearly explained on page two of the 1 Month Notice which the Tenant confirmed that she had read and understood.

The Tenant failed to make an Application to dispute the Notice. Therefore, I find that the Tenant is conclusively presumed to have accepted the Notice and must move out of the rental unit. Furthermore, under Section 26 of the Act and the signed tenancy agreement, the Tenant is required to pay the rent on the day it was due, here that is 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]

The Tenant disclosed that she had not paid rent on time for the months of June and July 2016 and had failed to pay any rent for October 2016. Therefore, I also find that the Tenant has been repeatedly late paying rent.

As the Tenant is in rental arrears and the effective vacancy date of the 1 Month Notice has now passed, the Landlords are entitled to an Order of Possession effective two days after service on the Tenant. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental unit. Copies of this order are attached to the Landlords' copy of this Decision.

As the Landlords were successful in obtaining an Order of Possession to end the tenancy, I grant the Landlords the \$100.00 filing fee paid to make the Application. Pursuant to Section 72(2) (b) of the Act, the Landlords may deduct this amount from the Tenant's security deposit at the end of the tenancy to achieve this relief.

Conclusion

The Tenant failed to dispute the 1 Month Notice and paid rent late repeatedly during the tenancy. Therefore, the Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlord withdrew the monetary claim and is given leave to re-apply. The Landlords are allowed to recover the filing fee from the Tenant's security deposit.

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: October 28, 2016

Residential Tenancy Branch