



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated September 27, 2016.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord objected to the documentary evidence presented by the Tenants stating it was not delivered until November 16, 2016 which is after the 2 week required under the Rules.

I find that the Notice to End Tenancy was personally served on the Tenants on September 27, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail on October 6, 2016. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated September 27, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 19, 2012. The present rent is \$823 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$400 at the start of the tenancy.

Grounds for Termination:

The grounds for ending the tenancy as set out in the one month Notice to End Tenancy are as follows:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:

- ...
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified the tenants were late paying the rent as follows:

- September 2016 rent paid on September 8 2016
- July 2016 rent paid on July 8, 2016
- June 2016 rent paid on June 3, 2016
- May 2016 rent paid on May 12, 2016
- April 2016 rent paid on April 7, 2016
- March 2016 rent paid on March 8, 2016
- The rent was paid late on 10 occasions in 2015.
- The rent was paid late on 4 occasions in 2014.

The tenant testified as follows:

- The landlord would not give a receipt
- At all times she communicated with the landlord by text message that the rent was to be paid late.
- The landlord failed to provide receipts.
- Sometimes the landlord was not there to pick up the rent on the first of each month.
- On occasions they did not have the rent on time as they did not want to have cash in their home.

Policy Guideline #38 provides as follows:

“The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² 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

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.

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.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

I am satisfied based on the evidence presented that the tenants have paid the rent late on more than 3 occasions. Communicating with the landlord that you are making a late payment is not sufficient defense. Given this determination it was not necessary to consider the other grounds. However, rather than proceeding with the hearing the parties reached a settlement.

Settlement:

The parties reached a settlement and they asked that I record the settlement as follows:

- a. The parties mutually agree to end the tenancy on January 31, 2017.
- b. The parties request the arbitrator issue an Order for Possession for that date.

Order for Possession:

As a result of the settlement I granted an Order for Possession effective January 31, 2016. The tenants application to recover the cost of the filing fee is dismissed.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: November 25, 2016

Residential Tenancy Branch