



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 11, 2016 to cancel a notice to end tenancy for cause and for unpaid rent.

The Tenant, an advocate for the Tenant, and the Landlord appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the Tenant's Application and the service of both parties' documentary evidence provided prior to this hearing. The hearing process was explained and the participants had no questions or issues with the proceeding instructions. Both parties were provided the opportunity to present their evidence, make submissions to me, and to cross-examine the other party on the issue to be decided.

Issues(s) to be Decided

Should the notices to end tenancy be cancelled?

Background and Evidence

The parties agreed that this tenancy started on September 1, 2013 on a month to month basis. A written tenancy agreement was signed which requires the Tenant to pay rent in the amount of \$700.00 on the first day of each month. The parties confirmed that the rent amount had changed to \$717.00 effective on April 1, 2015 and that this amount was payable on the first day of each month. No security deposit was paid for this tenancy.

The Landlord testified that the Tenant had been habitually late paying his rent in this tenancy and that this was evidenced by the rent receipts which both parties had provided into evidence.

The Landlord testified that the Tenant had been issued with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on: August 2, 2016; September 2, 2016; and October 2, 2016. The Landlord testified that the Tenant had also paid rent late for November 2016 and no rent had been paid for December 2016.

The Landlord testified that even though she received rent from the Tenant after serving him with the 10 Day Notices for each of the above three months, she got sick and tired of the late payment of rent and served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated October 2, 2016. The 1 Month Notice was provided into evidence and shows a vacancy date of November 30, 2016.

The Tenant confirmed that he had not paid his rent for December 2016 at the time of this hearing because he was waiting for the outcome of this hearing. The Tenant confirmed receipt of the 1 Month Notice on October 2, 2016. The Tenant's advocate stated that the Tenant regularly paid rent on the 1st and 5th day of each month as evidenced by the rent receipts the Tenant had provided. The Tenant's advocate stated that the Landlord had acknowledged this agreement.

The Landlord denied that the Tenant was given any permission to make rent payments in two installments on the 1st and 5th day of the month. The Landlord testified that she felt sorry for the Tenant and this is why she let him get away with making late rent payments during the tenancy; however, the Landlord got sick and tired of this and started to address the issue with the Tenant through the 10 Day Notices.

The Tenant's advocate was asked to present evidence on the Tenant's payment of rent in this tenancy. The Tenant confirmed through his advocate that he had paid rent late for: June 2016 on June 7, 2016; July 2016 on July 3, 2016; August 2016 on August 2, 2016; October 2016 on October 3, 2016; and November 2016 on November 2, 2016. The Tenant's advocate could not confirm or deny whether the Tenant had made payment on time for September 2016 rent.

Analysis

In examining the 1 Month Notice, I find that the contents on the approved form comply with Section 52 of the *Residential Tenancy Act* (the "Act") and the manner in which it was served to the Tenant also complied with the Act. I find that the Tenant received the 1 Month Notice on October 2, 2016 and disputed the Notice within the 10 day time limit afforded by Section 47(4) of the Act. I also find that the Notice allowed for a full rental month of notice to expire before the vacancy date pursuant to Section 47(2) of the Act.

Section 26 of the Act requires a tenant to pay rent on the day that it is due. In this case, I find that the Landlord and Tenant established a written tenancy agreement which made it clear that the Tenant had an obligation to pay rent on the **first** day of the month. The Tenant attempted to argue that the Landlord had consented to the Tenant making late payment of rent by allowing the rent payments to be made on the first and fifth day of each month. This agreement was denied by the Landlord. Certainly the Tenant's evidence of late payments he made from June 2016 onwards does not support an express or implied agreement that the Tenant was allowed to make rent in split payments on the first and fifth day each month. In this respect, I turn to the tenancy agreement signed by the Tenant as sufficient and conclusive evidence of the Tenant's requirement to pay rent on the first day of each month.

In determining whether the Tenant has been repeatedly late paying rent, I turn to Policy Guideline 38 to the Act which 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]

Based on this policy guideline and the evidence before me I find there is sufficient evidence that the Tenant has been paying rent late throughout this tenancy which is now in its third year. The Act does not allow a tenant to continually pay rent late and provides remedy to a landlord to end a tenancy for this reason.

In particular, I turn to the Tenant's oral evidence which supports the Landlord's 1 Month Notice and I find on the balance of probabilities that the Tenant has paid rent late in this tenancy from June 2016 onwards. This is more than three times which are not far apart. The Landlord provided three 10 Day Notices into evidence which I find is sufficient evidence that made it clear to the Tenant that late payment of rent was not acceptable by the Landlord. Therefore, I deny the Tenant's request to cancel the 1 Month Notice and the tenancy must end because the Tenant has been repeatedly late paying rent. As a result, the Tenant's Application is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a notice to end tenancy the Arbitrator **must** grant an Order of Possession if the notice to end tenancy complies with the Act and the tenant's application is dismissed. As I have made a finding that the 1 Month Notice complies with Section 52 of the Act and the Tenant's Application to the cancel the 1 Month Notice is dismissed, the Landlord must be granted an Order of Possession.

The Act does not allow a tenant to withhold rent pending the outcome of dispute resolution proceedings. Therefore, as the evidence before me is that the Tenant is in rental arrears on the day of this hearing and the vacancy date on the 1 Month Notice has now expired, the Landlord is entitled to a two day Order of Possession.

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 the order are attached to the Landlord's copy of this Decision. The Tenant may be liable for the losses incurred by the Landlord for having to enforce the order.

Conclusion

I find the Tenant has been repeatedly late paying rent and that the 1 Month Notice is valid and should not be cancelled. The Tenant's Application is dismissed without leave to re-apply. The Landlord is granted a two day Order of Possession. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 02, 2016

Residential Tenancy Branch