



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNSD, OLC, FF (Tenants' Application)
 OPC, MNDC, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlord.

The Tenants applied to: cancel a notice to end tenancy for cause; for the return of their security and pet damage deposits; for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation, or the tenancy agreement; and to recover the filing fee. The Landlord applied for: an Order of Possession for cause; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony. No issues in relation to the service of the parties' Applications and their documentary evidence by registered mail were raised by the parties during the hearing. 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 on the issues to be decided.

Preliminary Issues

During the hearing, the Landlord withdrew her monetary claim for unpaid rent in this tenancy. This was because the parties were at dispute regarding the rental arrears at the time of this hearing and explained that they were in possession of documentary evidence that had not been provided for this hearing. The parties agreed that they would attempt to resolve the issue of unpaid rent between them outside of the dispute resolution and independent from my decision on whether this tenancy should end.

The parties confirmed that the Tenants were still occupying the rental unit. Therefore, I found that the parties' Applications with respect to what is happen to the Tenants'

security and pet damage deposits was premature. Therefore, only the Landlord's request for an Order of Possession and the Tenants' Application to cancel the notice to end tenancy for cause was considered in this hearing.

Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy for an apartment in a residential ski resort began on November 1, 2015. The parties signed a tenancy agreement which required the Tenants to pay rent in the amount of \$1,400.00 on the first day of each month. The tenancy agreement provided into evidence shows that it was for a fixed term due to expire on April 30, 2016; after this time period the tenancy was to continue on a month to month basis. The Tenants paid the Landlord a security deposit of \$700.00 and a pet damage deposit of \$200.00 at the start of the tenancy. These two amounts are herein collectively referred to as the "Deposits" in this Decision. The Landlord confirmed that she retained a total of \$900.00 in the Tenants' Deposits.

The parties confirmed in oral testimony that after the fixed term ended, the rent converted to \$400.00 per month. The Landlord testified that she continued to accept rent from the Tenants at the reduced rate of \$400.00 per month as that was the agreed amount for the summer season. The Landlord testified that she offered the Tenants to sign a tenancy agreement to reflect the reduced amount but they refused to sign it. The Landlord submitted that there was a mutual understanding that the rent was going to revert back to the agreed amount on the signed tenancy agreement of \$1,400.00 on November 1, 2016 which was the winter season rent amount.

The Tenants confirmed that they paid rent from May 1, 2016 in the amount of \$400.00 per month but submitted that there was no written agreement for them to pay the increased amount of \$1,400.00 starting on November 2016. The Tenants explained that there currently are no rental arrears in this tenancy as they have paid \$400.00 each for the months of November and December 2016.

The Landlord testified to the following dates the Tenants had paid rent late in this tenancy:

November 2015	Rent paid late on November 20, 2015
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December 2015	Rent paid late on December 7, 2015
January 2016	Rent paid late on January 7, 2016
February 2016	Rent paid late on February 7, 2016
March 2016	Rent paid late on March 2, 2016
April 2016	Rent paid on time
May 2016	Rent paid on time
June 2016	Rent paid on time
July 2016	Rent paid late on July 4, 2016
August 2016	Rent paid on time
September 2016	Rent paid late on September 2, 2016
October 2016	Rent paid late on October 3, 2016

The Landlord testified that on October 20, 2016 she had an agent personally serve the Tenants a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) because the Tenants were repeatedly late paying rent. The 1 Month Notice was provided into evidence and shows a vacancy date of November 30, 2016.

The Tenants confirmed receipt of the 1 Month Notice on October 20, 2016. The Tenants confirmed and did not dispute the Landlord’s evidence regarding the above dates that they had paid rent late.

Analysis

I have examined the 1 Month Notice and I find that the contents of the Notice comply with Section 52 of the Act. I accept the Tenants received the 1 Month Notice on October 20, 2016 and applied to dispute it the following day. Therefore, I find that the Tenants disputed the Notice within the ten day time limit provided by Section 47(4) of the Act.

Under Section 26 of the Act and the signed tenancy agreement, the Tenants were required to pay the rent on the day it was due; here that was 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]

After applying the above guidelines to the undisputed evidence of the parties before me, I find the Tenants paid rent late at least three times in the last 12 months of this tenancy. I find the months that the Tenants did paid rent on time are not significant or sufficient enough for me to conclude that they were far enough apart to escape the repeatedly late provisions of the Act which the Landlord relies on to end the tenancy.

Therefore, I find the Tenants are not entitled to cancel the 1 Month Notice and the Landlord is granted an Order of Possession. As I made no legal findings on the issue of rental arrears in this tenancy, I issue the Landlord with an Order of Possession effective for the end of December 2016 at 1:00 p.m. The Tenants must be served with a copy of the order and this may be then be enforced through the Supreme Court of British Columbia if the Tenants fail to vacate the rental unit. Copies of this order are attached to the Landlord's copy of this Decision. As the Tenants have not been successful in their Application to prevent the ending of the tenancy and the Landlord has, I only grant the Landlord the filing fee. The Landlord may achieve this relief by deducting \$100.00 from the Tenants' security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenants have been repeatedly late paying rent. Therefore, the 1 Month Notice is valid and should not be cancelled. The Tenants' Application is dismissed and the Landlord is granted an Order of Possession effective for December 31, 2016. The Landlord may recover the filing fee through the Tenant's Deposits. The parties are at liberty to re-apply for their monetary claims for unpaid rent and to deal with the Deposits at the end of the tenancy. 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 12, 2016

Residential Tenancy Branch