



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, OLC, MNDC

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. More time to make an application to dispute a number of notices to end tenancy - Section 46, 47;
2. An Order cancelling a number of notices to end tenancy - Section 46, 47;
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants withdraw the claim for compensation and state that the claim for the Landlord’s compliance was in relation to the number of notices the Landlord was serving. It is noted that the Landlord served notices to end tenancy in October and November 2016 and the Tenants have disputed one or all of these notices. As the Act allows a landlord to end a tenancy by issuing notices and also allows a tenant to dispute those notices I find that the Tenants have not substantiated that the Landlord has done anything out of compliance with the Act by serving the notices. As such I dismiss the claim for an order of compliance.

Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on March 1, 2016. Rent of \$700.00 is payable on the first day of each month.

The Landlord states that the Tenants were late paying rent for September, October and November 2016 and that on November 23, 2016 the Landlord served the Tenants with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door. The reason set out on the Notice is that the Tenants are repeatedly late paying the rent.

The Tenants do not dispute that October and November 2016 rents were paid late and that no rent has been paid for December 2016 or January 2017. The Tenant states that the September 2016 rent was paid on September 1, 2016 and that the bank draft was issued by the bank in error for \$600.00. The Tenant states that this error was not noticed until the Landlord served a 10 day notice for unpaid rent dated October 13, 2016. It is noted that this Notice indicates that \$310.00 was outstanding as of October 1, 2016. The Landlord states that their journal notes that the payment for September 2016 rent was made by the Tenants on September 6, 2016 and that the date of September 1, 2016 was set out on the receipt in error.

Analysis

Section 47 of the Act provides that where a tenant has 10 days to dispute a notice to end tenancy for cause. It is noted that the Tenants made their application on December 2, 2016. As the Notice was served by posting on the door, I find that it was deemed received on November 26, 2016. As the Tenants disputed the Notice within 10 days I find that the Tenants do not require additional time to dispute this Notice.

Section 47 of the Act also provides that a landlord may end a tenancy where a tenant is repeatedly late paying rent. Late rent payments for three months are considered under Residential Tenancy Branch policy as repeated late rent. I find the Tenant's oral evidence of bank error creating a shortage in the rent payment for the September 2016 not to be credible and merely a convenience. Further even if there was a bank error on the amount, given the Landlord's evidence of journal entries for the payment of September 2016 rent I find that the Landlord has substantiated on a balance of probabilities that the Tenants paid the September 2016 rent late. Given this finding and based on the undisputed evidence of late rent payments for October and November 2016 I find that the Tenants have repeatedly paid the rent late. As such I find that the Notice is valid and the tenancy is ended. As the tenancy is ended on the Notice it is not necessary to consider the validity of any of the other notices to end tenancy.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. As the Notice complies in form and content and as the Notice has been upheld as valid I find that the Landlord is entitled to an order of possession.

Conclusion

I grant an Order of Possession to the Landlord. The Tenants must be served with this **Order of Possession**. Should the Tenants 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.

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: January 11, 2017

Residential Tenancy Branch