



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAHANA HOLDINGS LTD INC NO.BC0343774
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, DRI, OLC, O

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");
- an order that the landlord has issued an illegal rent increase;
- an order that the landlord comply with the Act, regulations or the tenancy agreement; and
- unspecified other relief.

The owner of the rental unit, landlord "C.F.", appeared at the teleconference hearing accompanied by two property managers, property manager "S.Y." and property manager "L.Y." (collectively referred to as the "landlords"). The landlords were affirmed and landlord C.F. and the property manager S.Y. gave most of the testimony. The tenant also appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and the tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant indicated that the 'other' unspecified relief that she was seeking was to stop the landlords' harassment. The tenant indicated that her claim for an order that the landlord comply with the Act, regulations or the tenancy agreement was also to stop harassment by the landlord and property managers.

The tenant is disputing a rent increase; however, the rent increase is not part of the tenant's defense to cancel the One Month Notice.

The Residential Tenancy Branch Rule of Procedure 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to re-apply.

Upon review of the tenant's application I have determined that I will not deal with all the dispute issues the tenant has placed on her application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the notice to end tenancy. Therefore, I will only deal with the tenant's application to dispute the One Month Notice. I dismiss the balance of the tenant's application with leave to re-apply.

The landlord issued two One Month Notices on different dates with the same effective date. The tenant's application is to dispute the One Month Notice dated January 14, 2017. The tenant testified that she has not yet received the second One Month Notice which is dated February 14, 2017. I will only be dealing with the One Month Notice dated January 14, 2017, which is the subject of the tenant's application.

Issue(s) to be Decided

- Is the tenant entitled to cancellation of the One Month Notice?

Background and Evidence

The undisputed evidence established that tenant purchased the manufactured home in May 2014. While there is a written pad tenancy agreement signed by the tenant, the tenant indicated that some terms have been altered on the face of the agreement, including the rent amount. Property manager S.Y. acknowledged altering the copy of the pad tenancy agreement including the rent amount to correct what was an error in the amount. While the tenant opposes the change in rent, the tenant has been making the rent payments in the amount the landlord has stipulated. The tenant is currently paying rent in the amount of \$622.00 which is due on the first day of each month. The property managers, S.Y. and L.Y. assumed responsibility for managing the rental property in August 2015.

The undisputed evidence established that a One Month Notice dated January 14, 2017 was served on the tenant by registered mail sent on January 14, 2017. The One Month Notice indicated that the tenant was required to vacate the rental unit on February 28, 2017.

The landlord's reason for wanting to end the tenancy set out on the One Month Notice is that the tenant has been repeatedly late paying her rent.

Property manager S.Y. testified that the tenant was late paying rent for each of the months of January, May and July 2016; and January 2017.

The tenant acknowledged that she was late paying rent for January, May and July 2016. However, the tenant denied the landlord's allegations that the rent was paid late for the month of January 2017.

While the tenant acknowledged the rent was paid late in July 2016, she argued that she was not to blame. The tenant testified that the late payment was the government's fault for depositing the tenant's financial aid cheque into the wrong account. The tenant testified that the deposit was made to her savings account at another bank instead of the proper chequing account.

The tenant supplied a document that the tenant argued supported her testimony about a government error. The tenant indicated that the document is a bank statement showing that the government payment was received into the tenant's account on July 6, 2016. The tenant testified that an additional \$20.00 was deposited by the government as a late fee charge for the tenant's late rent fee as it was the government's error. The tenant paid the rent that was due on July 1, 2016 on July 7, 2016 by way of a cash payment. The tenant testified that it took her several days to discover the error.

The tenant denied having been late paying rent for the month of January 2017. The tenant testified that she delivered 12 post-dated cheques to the landlord on November 30, 2016. The tenant testified that the 12 post-dated cheques were for rent due for each of the months of January through to December 2017.

The tenant testified that the landlord refused to accept the post-dated cheques and returned them to the tenant on December 31, 2016. The tenant testified that she put the post-dated cheques back into the landlord's mailbox on January 1, 2017. The tenant testified that the landlord returned the post-dated cheques to the tenant again. The tenant testified that the landlord provided a letter to the tenant dated January 4, 2017 indicating that the landlord would only accept rent in the form of cash or a certified cheque. The tenant paid the rent on January 13, 2017 in the form of cash.

Property manager S.Y. testified that the tenant was informed in June 2016 that the landlord and park manager would no longer accept rent in the form of cheques from the tenant. As a result the tenant was required to pay rent in the form of cash or certified cheque. The landlord's position is that the tenant was late paying rent for the month of January 2017 as the tenant did not provide rent in the approved form on the day that it was due.

The tenant testified that in June 2016 the former property manager was assisting property managers S.Y. and L.Y with the transition in taking over management of the property. The tenant testified that she was told by the former property manager that if she paid her rent by cash with no problems for the rest of the year, she would be permitted to pay rent by post-dated cheques again, starting in the new year. The tenant's position is that she relied upon what the former property manager had told her when she delivered her post-dated cheques for the rent before the rent was due.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the landlord has provided sufficient evidence in support of the reasons given on the One Month Notice regarding late payment of rent.

I find that there is sufficient evidence that the tenant paid rent late for each of the months of January 2016, May 2016 and July 1, 2016.

I do not find that there is sufficient evidence to support a finding that the late rent payment was due to a government error. The document provided by the tenant was insufficient to corroborate the tenant's claim that the government funds had been deposited into the 'wrong' account causing an error. The document only shows one transaction on the date that the tenant indicates the funds were deposited into the tenant's correct account on July 6, 2016. There is no other documentation relating to a second deposit into any other account to support an error. For these reasons, I find that the document doesn't provide sufficient detail to establish that there was a government error as suggested by the tenant.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...

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...

There is clear evidence that the written paid tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions. Although the tenant provided different reasons and explanations for why their rent was not received by the landlord for some of these months, I am satisfied that there is a pattern of late payment of rent during this tenancy.

As the three late payments for each of the months of January, May and July 2016 are sufficient to establish a pattern of late payment of rent, I do not need to make any findings with respect to payment of rent for the month of January 2017.

I find that the One Month Notice complies with s.52 of the *Act* and that the landlord served the One Month Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to

cancellation of the One Month Notice and I uphold the notice to end the tenancy. Accordingly, I dismiss the tenant's application to cancel the One Month Notice.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession to take effect February 28, 2017 at 1:00 p.m., the effective date set out in the One Month Notice.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed without leave to reapply and the tenancy will end.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective February 28, 2017 at 1:00 p.m., subject to the Order being served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 27, 2017

Residential Tenancy Branch