



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, DRI, OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 of the *Act*;
- an Order for the landlord to not raise the rent above the legislated amount of 3.7% pursuant to section 62 of the *Act*; and
- an Order pursuant to section 62 of the *Act* for the landlord to comply with the *Act*.

Both the tenant and the landlord were present at the hearing. Both parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions of evidence under oath.

Based on the sworn testimony at the hearing, I accept that the tenant was served in person by the landlord with the 1 Month Notice and the evidentiary package on December 31, 2016. Pursuant to section 88 of the *Act*, the tenant is found to have been served December 31, 2016.

The tenant could not provide an exact date on which he served the landlord with the Application for Dispute Resolution hearing package ("Application for Dispute") and his evidentiary package. There was some debate as to whether they were served on January 12th or 13th, 2017. At the outset of the hearing, the landlord acknowledged service and said that he believed it was "within the ten days." As the hearing progressed, the landlord stated that he had a text message dated January 12, 2017 received from the tenant concerning service of the Application for Dispute and the evidentiary package. Due to the confused nature of the tenant's service and pursuant to sections 64(3)(c) and 66(1) of the *Act*, I amend the tenant's application for dispute resolution to allow for more time. The tenant's Application for Dispute and the evidentiary package are found to have been served on the landlord as per sections 88 and 89 of the *Act* on January 12, 2017.

At the outset of the hearing, the tenant stated that he would like to withdraw his application for the landlord to comply with the *Act* pursuant to section 62. The tenant explained that he did not understand the wording of the Tenant's Application for Dispute Resolution and simply checked the boxes he felt were appropriate.

Issue(s) to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?

- Should the landlord be directed to only raise rents pursuant to the legislated amount of 3.7%?

Background and Evidence

The landlord testified that this tenancy began in November 2012. Rent was \$900.00 and rose to its current amount of \$975.00 in February 2015. It is a month-to-month tenancy and a security deposit of \$400.00 continues to be held by the landlord.

The landlord explained that he issued the tenant a 1 Month Notice for Cause because of repeated late payments of rent. Specifically, the landlord stated that the tenant was late with rent in January, August and September 2016. When asked why he waited until December 31, 2016 to issue a Notice to End Tenancy, the landlord explained that he and the tenant had usually been able to “work things out” and he had been very busy with school and a new job, so was unable to complete the required paper work. The landlord said that following a disagreement with the tenant on December 24, 2016 surrounding the proposed rental increase, he decided to issue a Notice to End Tenancy.

The tenant did not dispute that rent was late; however, he noted that he was under the impression that he and the landlord were in the midst of negotiating a rental increase and for this reason, some confusion arose around how much rent was to be paid.

Analysis – 1 Month Notice

Evidence was presented during the course of the hearing that rent was most recently paid late in January, August and September 2016. The landlord noted that these months are the latest examples of the tenant paying rent after it is due. Further evidence was provided that the landlord received a returned cheque in July 2015 and rent was previously late in March 2015.

The tenant highlighted *Residential Tenancy Policy Guideline #38* which discusses the issue of repeated late payment of rent. It states:

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 payment *may be determined by the arbitrator to have waived reliance on this provision.*

The landlord stated explicitly that he was pre-occupied with other matters during the fall 2016 and therefore turned his attention to those commitments. Despite the landlord’s inattention to the matter, rent was late consecutively in August and September 2016. This follows a late payment of rent from January 2016. In a span of nine months, rent was late three times. The

tenant cannot therefore rely on *Policy Guideline #38* to advance an argument that the late payments were far apart.

The tenant is unsuccessful in cancelling the landlord's 1 Month Notice for Cause and a 2 Day Order of Possession will be issued to the landlord.

Rent Increase

As the landlord was successful with his 1 Month Notice to End Tenancy, this issue is now moot.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. **If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.**

The tenant's application to dispute a rental increase is dismissed.

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: February 10, 2017

Residential Tenancy Branch