



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI

Introduction

This hearing was convened by way of conference call in response to a Tenant's Application for Dispute Resolution (the "Application") filed on January 13, 2016 to cancel a notice to end tenancy for unpaid rent and to dispute an additional rental increase.

Both Landlords named on the Application appeared for the hearing and provided affirmed testimony. The Tenant dialed ten minutes late into the hearing and the evidence provided by the Landlords was recapped with the Tenant who also provided affirmed testimony. The Landlords confirmed receipt of the Tenant's Application and the parties confirmed receipt of each other's documentary evidence.

Preliminary Issues

The Tenant had applied to deal with a notice to end tenancy for unpaid rent. However, neither party provided me a copy of a this notice. The only notice to end tenancy before me was a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated January 9, 2017.

The Landlords explained that they had not issued the Tenant with a notice to end tenancy for unpaid rent apart from the one that was served to the Tenant in November 2016. The Tenant stated that she had been served with a notice to end tenancy for unpaid rent in January 2017 but she did not have this before her.

In order for me to cancel any notice to end tenancy, a party is required to provide it into evidence. As the Landlords confirmed that they had not served the Tenant with a notice to end tenancy for unpaid rent and no such notice was before me, I dismissed the Tenant's Application to cancel a notice to end tenancy for unpaid rent. However, the Tenant had indicated in the details of dispute section of the Application that she was also disputing the 1 Month Notice. Therefore, pursuant to my authority under Section

64(3) (c) of the *Residential Tenancy Act* (the “Act”), I amended the Tenant’s Application to dispute the 1 Month Notice.

Issues(s) to be Decided

- Have the Landlords imposed an illegal rent increase?
- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agreed that this tenancy started on August 1, 2016. A written tenancy agreement was signed and the Tenant paid a security deposit of \$207.50 to the Landlords at the start of the tenancy which the Landlords still retain.

The parties brought it to my attention that they were involved in a previous hearing held on January 3, 2016 in which the Tenant had disputed an alleged rent increase; the file number for that hearing appears on the front page of this Decision.

The Landlords explained that the Arbitrator who conducted that hearing heard all of the evidence in relation to the amount of rent payable in this tenancy. That Arbitrator then made a finding that the Tenant’s rent was to be set at \$830.00 starting on November 2016 which was payable on the last day of the previous month. That Arbitrator also cancelled the notice to end tenancy for unpaid rent that was served to the Tenant in November 2016.

The Landlords testified that the Tenant failed to pay the full amount of rent for the November and December 2016, and has also failed to pay rent for January and February 2017. The Landlords testified for these months the Tenant has only paid \$415.00 as opposed to the \$830.00 she was required to pay as determined by the previous Arbitrator. Therefore, the Tenant has been repeatedly late paying rent and the Landlords seek to end the tenancy for the end of February 2017. The Landlords also provided documentary evidence relating to other breaches in this tenancy.

As a result, the Tenant was personally served with the 1 Month Notice on January 9, 2017. The 1 Month Notice details a vacancy date of February 9, 2017 and the reasons for ending the tenancy elected are:

- The Tenant is repeatedly late paying rent;
- The Tenant has allowed an unreasonable number of occupants into the unit;

- Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
 - put the Landlord's property at significant risk.
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the Landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord; and
 - jeopardize a lawful right or interest of another occupant or the Landlord.

The Tenant stated that she had only paid \$415.00 as rent in this tenancy because she did not agree with the previous Arbitrator's findings that the rent should be payable at \$830.00 because it was obvious that the Landlord duped her into setting the rent for this amount. The Tenant acknowledged that I did not have authority to change the previous Arbitrator's decision but stated that she had been given incorrect information by the Residential Tenancy Branch about filing an appeal of that Arbitrator's decision, which she did not file.

The Tenant stated that she could only afford rent in the amount of \$415.00 per month and this amount was being paid by a third party government agency. The Tenant stated that she knows she is going to be evicted but informed she is working diligently with several other agencies to find another place to move to. However, the Tenant was unable to reach any agreement with the Landlords to end the tenancy mutually as she was not in a position to suggest a move-out date for mutual agreement.

Analysis

In examining the 1 Month Notice, I find that the contents and the approved form it was served on comply with Section 47(3) and 52 of the Act. I find the manner in which it was served to the Tenant in person complied with the Section 88(a) of the Act. I find the Tenant disputed it within the ten day time limit afforded to her under Section 47(4) of the Act.

However, the 1 Month Notice does not allow for one full rental months of notice before it takes effect as required by Section 47(2) of the Act. In this respect, Section 53 of the Act allows for the vacancy date to accordingly be corrected to February 28, 2017.

Section 26 of the Act requires a tenant to pay rent on the day that it is due whether or not the landlord complies with the Act. In this case, the Tenant was correct in her understanding that I have no authority to change the outcome of the previous decision that was made on January 3, 2017 regarding the amount of rent payable in this tenancy of \$830.00 per month. The Tenant is also not able to re-argue that case in this hearing. Therefore, the Tenant has failed to disclose any illegal rent increase the Landlords have imposed and I dismiss the Application disputing an additional rent increase.

With respect to the 1 Month Notice, I turn my mind to the first reason on the 1 Month Notice of repeatedly late payment of rent. Policy Guideline 38 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 the foregoing evidence and provisions of the Act, I find the Tenant has failed to pay full rent for the four months starting on November 2016. I find that after the January 3, 2017 hearing, the Tenant was given an opportunity to pay the rental arrears and bring her rental payments back in line pursuant to the January 3, 2017 decision which was legally binding on the parties. As the Tenant failed to follow that decision, the Tenant has now jeopardised her tenancy.

Accordingly, I uphold the 1 Month Notice for the reason of repeatedly late payment of rent. As the Landlord has proved one of the reasons on the 1 Month Notice, there is no need for me to make findings on the remaining reasons to end the tenancy as these are now moot. As a result, I dismiss the Tenant’s Application to cancel the 1 Month Notice.

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 it complies with the Act and the tenant’s application is dismissed.

As I have made a finding that the 1 Month Notice complies with the Act and the Tenant’s Application is dismissed, the Landlords must be granted an Order of

Possession. This order is to take effect at 1:00 p.m. on February 28, 2017 in accordance with the corrected vacancy date of the 1 Month Notice. The Tenant 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 Tenant fails to vacate the rental unit on this date and time.

Conclusion

There are no illegal rent increases in this tenancy. The Tenant has been repeatedly late paying rent and the 1 Month Notice dated January 9, 2017 is upheld. The Landlord is granted an Order of Possession effective at 1:00 p.m. on February 28, 2017 to end 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: February 20, 2017

Residential Tenancy Branch