



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC OPC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied pursuant to the *Residential Tenancy Act* ("the *Act*") for: more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 66; cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution ("ADR") and the tenant confirmed receipt of the landlord's ADR. Both parties confirmed receipt of the other party's additional evidence.

Preliminary Matter: More Time to Apply

The tenant made an application for more time to apply – she applied outset of the timeline to dispute a 1 Month Notice to End Tenancy. However, the tenant had extensive evidence showing difficulties with the online application system over several days. Therefore, to ensure the tenant her fair opportunity to address the landlord's application for an Order of Possession, I allowed her application to cancel the 1 Month Notice.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession?

Is either the landlord or tenant entitled to recover their filing fee for this application?

Background and Evidence

This tenancy began on April 30, 2016 as a one year fixed term tenancy. The rental amount of \$1700.00 was payable on the first of each month. The landlord confirmed that he still holds an \$850.00 security deposit paid by the tenant at the outset of the tenancy. The tenant continues to reside in the rental unit as of the date of this hearing.

The landlords issued a 1 Month Notice for Cause on the ground that the tenant is repeatedly late paying rent. The landlord testified that the tenant has paid rent late since she moved into the unit in April 2016 however he testified that the tenant has paid rent late successively for the previous four months.

The landlord provided undisputed testimony that the rent has not been paid on time for the months of January 2017 to April 2017 as follows,

January **2**, 2017

February **2**, 2017

March **8**, 2017

April **18**, 2017

The tenants attempted to explain the reason for each month's late payment of rent: she testified that, often she has trouble connecting with the landlords as they do not live in the residence. The tenant testified that the landlords live approximately 5 minutes away, she believes and she believes that they have a mailbox however she has never attended to the residence to pay rent. She testified that sometimes, the landlords have come to the rental unit to receive the rent payment.

The tenant testified that, in January 2017, she was at a dentist appointment and not home to pay the rent. In February 2017, the tenant had difficulty agreeing to a time to meet the landlords to pay the rent to the landlords as neither party was available at the same time. She testified that, in March 2017, she had pneumonia: on that occasion, she emailed to say rent would be late. The tenant testified that, in April, she had provided her rent money to her son but her son had not taken the money on the day it was due.

Both parties agreed that communication has been a large and ongoing issue between them.

Analysis

The landlord must provide proof that the grounds he has identified in the notice to end tenancy are valid and that they meet the standard required under the *Act*. The landlord provided undisputed evidence that the tenant has paid the rent late on at least 3 dates prior to April 2017. The tenant testified providing reasons for the late payment of rent. Despite the tenants' explanations regarding the repeated late payment of rent, it is ultimately the tenants' responsibility to pay rent in full and on time every month.

In this matter, section 26 puts responsibility squarely on the tenant for payment of rent. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The landlords have applied to end this tenancy pursuant to a 1 Month Notice for Cause for repeated late rental payments by the tenant. Residential Tenancy Policy Guideline No. 38 provides guidance with respect to an application to end tenancy for late payment of rent. It states,

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

Based on the landlord's undisputed evidence regarding late payment of rent for the months of January 2017, February 2017, March 2017, and April 2017, the tenant has paid rent late on at three occasions. I also note that all of the rent payments required for 2017 have been late: as of the date of this hearing, both parties agreed that January to April 2017 rent have been paid late.

I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause based on the tenant's failure to pay rent on time or make the necessary efforts to ensure to have payment reach the landlords on time.

Therefore, I find that the tenant unsuccessful in her application pursuant to section 47(4) of the *Act* to cancel the 1 Month Notice. The landlord is entitled to an Order of Possession for Cause as well as the recovery of their filing fee for this application. In accordance with section 72(2) of the *Act*, I find that the landlord may retain a portion of the tenant's security deposit to recover the cost of the filing fee.

I dismiss the tenant's application to recover her filing fee.

Conclusion

I dismiss the tenant's application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to retain \$100.00 from the tenant's \$850.00 security deposit as payment for the filing fee. The tenant's security deposit will be reduced from \$850.00 to \$750.00.

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: April 28, 2017

Residential Tenancy Branch