



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on April 24, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated April 15, 2017 (the "One Month Notice");
- an order that the Landlords comply with the *Act*; and
- an order granting recovery of the filing fee.

All parties attended the hearing and provided affirmed testimony.

The Tenants testified that the Application package, including the Notice of Dispute Resolution Hearing and documentary evidence, was served on the Tenants, in person, on April 24, 2017. The Landlords acknowledged receipt. I find that the Tenants' Application package was received by the Landlords on April 24, 2017.

The Landlords submitted documentary evidence in response to the Tenants' Application. They testified it was served on the Tenants by registered mail on May 8, 2017. The Tenants acknowledged receipt on May 11, 2017. I find the Landlords' documentary evidence package was received by the Tenants on May 11, 2017.

The Tenants and the Landlords each submitted further evidence that was received at the Residential Tenancy Branch on May 18, 2017. However, as it was not submitted in accordance with Rule 3 of the Rules of Procedure, this late evidence was not considered in this Decision.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

Although not clearly indicated on the Application, the *Details of the Dispute* section disclosed an intention to seek an order that the Landlords comply with section 28 of the *Act*. Accordingly, pursuant to section 64 of the *Act*, I amend the Application to include a request for an order that the Landlords comply with the *Act*.

Issues to be Considered

Are the Tenants entitled to an order cancelling the One Month Notice?

Are the Tenants entitled to an order that the Landlords comply with section 28 of the *Act*?

Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the written tenancy agreement between parties was submitted into evidence by the Landlord. It confirmed the tenancy began on a fixed-term basis on May 1, 2013. Currently, the tenancy continues on a month-to-month basis. Rent in the amount of \$1,200.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$600.00.

The Landlords testified that the Tenants are repeatedly late paying rent and that they wish to end the tenancy on that basis. In support, the Landlords submitted a spreadsheet, created by A.B., which summarizes rent payments since January 1, 2015. The spreadsheet suggests the Tenants have been late no less than 16 times since January 1, 2015.

The Landlords also submitted documentary evidence in support of the One Month Notice. Only evidence regarding recent rent payments has been summarized in this Decision. Specifically, the Landlords submitted a copy of an email exchange between J.G. and A.B., dated October 2, 2016. In response to a reminder that rent is due on the first day of the month, J.G. wrote: "I worked yesterday and [L.R.] has just gone to the bank now when he is back I will be making the transfer", confirming rent was not paid at that time. Further, the Landlords submitted e-transfer statements dated January 2, February 2, March 2, and April 3, 2017. These statements confirmed the Tenants had made payments in various amounts to the Landlords. In addition, an email from J.G. to A.B., dated April 3, 2017, states: "I will pay the rent when I get back home today."

In reply, the Tenants suggested the e-transfer statements only indicate when each payment was accepted by the Landlord, not when it was received by the Landlords.

The Tenants also sought an order that the Landlords comply with section 28 of the *Act*. J.G. outlined a number of issues that she submitted have resulted in a loss of quiet enjoyment. J.G. stated the Tenants feel like they are "observed and supervised" on the rental property. The vague and unsupported complaints described by J.G. included:

- issues with snow removal by the Landlords;
- a broken heat pump (which was subsequently repaired by the Landlords);
- a disagreement about fault for the condition of the deck;
- a loose railing on the deck;
- the presence of the Landlords near the rental property;
- the Landlords walking their dog off-leash on the rental property; and
- providing parts of the Tenants' Application package to other tenants on the property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 47(b) of the *Act* permits a landlord to end a tenancy when the tenant is repeatedly late paying rent.

Policy Guideline 38 provides clarification with respect to ending a tenancy on the basis of repeated late payments 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...

...

Whether the landlord was inconvenienced or suffered damage as a result of any of the late payments is not a relevant factor in the operation of this provision.

[Reproduced as written.]

In this case, the tenancy agreement states, and I find, that rent is due on the first day of each month. However, the Landlords tendered documentary evidence, which I accept, confirming the Tenants paid rent late in October 2016, and in January, February, March and April 2017. I find the Tenants have been repeatedly late paying rent, contrary to the *Act*. Accordingly, the Tenants' Application to cancel the One Month Notice is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord. Having reviewed the One Month Notice, copies of which were submitted into evidence by both parties, I find it complies with section 52 of the *Act*.

Accordingly, I grant the Landlords an order of possession, which will be effective on May 31, 2017, at 1:00 p.m.

As I have issued an order of possession in favour of the Landlords, it is not necessary for me to further consider the Tenants' request for an order that the Landlords comply with section 28 of the *Act*. This aspect of the Tenants' Application is dismissed.

As the Tenants have not been successful, I decline to grant recovery of the filing fee paid to make the Application.

Conclusion

The Tenants' Application is dismissed and the 1 Month Notice is upheld.

By operation of section 55 of the *Act*, the Landlords are granted an order of possession, which will be effective on May 31, 2017, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: May 25, 2017

Residential Tenancy Branch