



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATA PLAN VR1323 (FIRST SERVICE RESIDENTIAL)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT CNC O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; and an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The landlord did not attend this hearing, although the 9:30 am teleconference continued until 9:44 am. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, and to make submissions with respect to his application. The tenant testified that all of his application (including the application to allow access to the unit and any other remedy under the Act) are intended solely to support his application to cancel the notice to end tenancy. As the tenant is not seeking any other remedy other than the cancellation of the landlord's notice to end tenancy, I dismiss the application to allow access and for an "other" remedy.

The tenant testified that he received the landlord's 1 Month Notice to End Tenancy "sometime after it was posted on his door". The 1 Month Notice is dated April 27, 2017. The tenant agreed that he was served with the 1 Month Notice by April 30, 2017. Therefore, I find that the 1 Month Notice was sufficiently served in accordance with section 88 and 90 of the Act.

The tenant applied to dispute the 1 Month Notice on May 8, 2017. He testified that he served the landlord with his Application for Dispute Resolution ("ADR"), including the Notice of Hearing and his documentary evidence by sending a copy to the address at which the landlord carries on business: the office mail address for the landlord at the residential premises/apartment building as provided on the residential tenancy agreement. Based on the tenant's sworn and undisputed testimony with respect to service of his ADR, I find that the landlord was sufficiently served with the tenant's ADR in accordance with section 89 and 90 of the Act.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that the residential tenancy began in 2007. The current rental amount of \$450.00 is payable on the first of each month. The landlord did not attend this hearing but the tenant testified that he did not pay any security deposit. The tenant testified he continues to reside in the rental unit.

The landlord issued a 1 Month Notice to End Tenancy on April 27, 2017 by posting it on the tenant's door. Therefore, in accordance with section 88 and 90 of the Act, the tenant was deemed served on April 30, 2017. He testified that he received the notice before the end of April 2017 and applied to dispute the notice on May 8, 2017. The 1 Month Notice's effective date was May 31, 2017 and the reason cited by the landlord was that the tenant repeatedly paid rent late.

The tenant submitted his rent payment receipts from February 2016. According to the receipts, the tenant paid rent on the date it was due in every month of 2016 except May 2016 when he paid rent on May 2, 2016. Two months in 2016, the tenant paid the rent early. In 2017, the receipts show that the tenant paid rent on time but for January 2017 (paid on 4th) and April 2017 (paid on 3rd). The tenant testified that, in January 2017, the landlord's office was not open to accept his payment because of the Christmas holidays. He provided sworn undisputed testimony that he paid rent on the first day the office was open for business. He also submitted that April 1, 2017 was a Saturday and he paid rent on the Monday, April 3, 2017. Finally, the tenant testified that he always paid his rent in cash and receives a receipt.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. While the landlord was served with notice of this hearing by the tenant, the landlord did not attend this hearing or submit any evidence for this hearing to support the 1 Month Notice.

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 tenant is required to pay rent on time and in full each month.

As well as section 26 of the Act, Residential Tenancy Policy Guideline No. 38 provides further details regarding the timely payment of 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.

The tenant is required to pay rent with strict adherence to the tenancy agreement and section 26 of the Act. However, I find, that in these circumstances, the tenant has provided undisputed evidence to show that the late payments are far apart: based on the receipts provided in documentary evidence, the tenant has paid rent late twice in 2017. One of those late payments occurred in January 2017 – approximately 6 months from the date of this hearing. A third late rent payment occurred in May 2016 – approximately 6 months prior to January 2017. I also note that, though it is not relevant to my decision in this matter, the tenant provided evidence that the rent payments have been late 1-3 days and he provided an explanation with respect to those incidents.

I have referred to the circumstances provided by the tenant as it was important to the tenant that his response to the landlord’s allegation be noted. However, as the landlord has not attended this hearing to provide evidence with respect to the grounds to validate the landlord’s 1 Month Notice, I find that the tenant’s undisputed application pursuant to section 47(4) of the Act made within less than 10 days of receiving the 1 Month Notice is successful. The 1 Month Notice is cancelled.

Conclusion

I cancel the landlord’s 1 Month Notice to End Tenancy. The tenancy will continue until ended in accordance with the Act.

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: June 20, 2017

Residential Tenancy Branch