



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, CNR, CNC, MNDC, MNSD, OLC, PSF, RP, RR

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

The tenants' applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlords to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with the notice of hearing package in person on May 13, 2017. Both parties also confirmed that the landlords served the tenants with the amendment to the application by posting it to the rental unit door on June 5, 2017. Both parties confirmed that the tenants served the landlords with the notice of hearing package in person on May 13, 2017. Both parties also confirmed that the amendment to the application for

dispute was served to the landlords in person on May 17, 2017. Both parties confirmed that the submitted documentary evidence was served and received by the other party in person. Neither party raised any issues regarding service. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act, I find that both parties have been properly served.

Preliminary Issue(s)

During the hearing the hearing it was clarified with both parties that neither party has submitted a copy of the notice to end tenancy issued for unpaid rent. The tenants confirmed that no application was filed to dispute this notice. The landlords confirmed that they failed to provide a copy of the 10 Day Notice as required. I spent a large portion of the hearing explaining the crucial and vital nature of this document to both parties. The Notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in their application to end a tenancy for unpaid rent. Neither party could provide sufficient details of the Notice that was issued. The tenants are entitled to have full answer and defence of any allegation made against them as is required under the Natural Laws of Justice. As such, I find that the landlords application be dismissed in its entirety with leave to reapply. Leave to reapply is not an extension of an applicable limitation period.

During the hearing the tenants provided undisputed affirmed testimony that the monetary claim for money owed or compensation and for the cost of emergency repairs (MNDC), the request for the return of the security deposit (MNSD), an order for the landlords to comply with the Act, regulations or tenancy agreement (OLC), the request for an order for the landlord to provide services or facilities agreed upon but not provided (PSF), a request for repairs to the rental unit (RP) and a request to authorize the tenants to reduce rent for services or facilities that the landlord has failed to provide (RR) are unrelated to the main issue of the request to cancel a notice to end tenancy and as such tenants' requested that these issues be cancelled. As such, no further action is required for these portions of the tenants' claim.

The hearing shall proceed on the tenants' request to cancel the 1 Month Notice dated May 1, 2017 and the 1 Month Notice dated May 10, 2017.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice(s)?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed in their direct testimony that a signed tenancy agreement was made, but that neither party has submitted a copy of it. Both parties confirmed that this tenancy began in December of 2015 on a 1 year fixed term tenancy which later became a month-to-month tenancy. Both parties agreed that the current monthly rent is \$1,000.00 payable on the 1st day of each month and that a security deposit of \$500.00 was paid.

Both parties agreed that the landlords served the tenants with a 1 Month Notice dated May 1, 2017 by posting it to the rental unit door on May 1, 2017, which sets out an effective end of tenancy date of June 1, 2017 and 3 reasons for cause listed as:

- the tenant is repeatedly late paying rent;
- the tenant or 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.

The landlords claim that the tenants have been repeatedly late paying rent for the month(s) of January 2017, February 2017 and March of 2017. The tenants confirmed in their direct testimony that rent has been late during those periods of time due to the tenants' pay periods not matching the rent due date(s).

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed testimony of both parties that the landlords have served the tenants with the 1 Month Notice dated May 1, 2017 as per sections 88 and 89 of the Act.

The landlords have provided undisputed affirmed testimony that the tenants have been repeatedly late paying rent for the months January 2017, February 2017 and March 2017. This is supported by the tenants' admission in their direct testimony that rent has been repeatedly paid late during this period.

The landlord has provided sufficient evidence to support the claim of the tenants repeatedly late paying rent, I find that the tenants' application to cancel the 1 Month Notice dated May 1, 2017 is dismissed. The 1 Month Notice dated May 1, 2017 is upheld. Pursuant to section 55 of the Act, the landlords are granted an order of possession which will be effective 2 days after it is served upon the tenants.

As the landlords' reason for cause has been upheld for repeatedly late payments of rent, I find that it is not necessary to address the remaining two reason for cause. I also find that it is not necessary to address the second 1 Month Notice dated May 10, 2017. The merits of those reasons and the second notice were not addressed.

Conclusion

The tenants' application to cancel the 1 Month Notice dated May 1, 2017 is dismissed. The 1 Month Notice dated May 1, 2017 is upheld.

The landlords are granted an order of possession pursuant to section 55 of the Act.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 21, 2017

Residential Tenancy Branch