



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ECM STRATA MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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 (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants provided affirmed testimony that the notice of hearing package was served to the landlord in person on June 7, 2017. The landlord confirmed receipt of this package. The tenant did not provide any documentary evidence. The landlord provided affirmed testimony that the tenant was served with their documentary evidence via Canada Post Registered Mail on July 6, 2017. The tenants confirmed receipt of this package. Neither party raised any issues of service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

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

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 applicant's claim and my findings are set out below.

This tenancy began on October 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 15, 2015. The monthly

rent is \$645.00 payable on the 1st day of each month. A security deposit of \$322.50 was paid on February 2, 2015.

On May 26, 2017, the landlord served the tenant with the 1 Month Notice dated May 26, 2017. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given 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;
 - put the landlord's property at significant risk; or
- the 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.

I note the written details provided on the notice state:

Consistent late payment of rent. Change of the locks without Landlords written consent.

The tenants dispute all of the reasons provided on the 1 Month Notice.

The landlord provided affirmed testimony that the tenants have been consistently late paying rent and refers to a copy of tenant ledger statement dated July 31, 2017. The landlord states that the tenant has been late paying rent for:

July 5, 2016
August 4, 2016
September 7, 2016
October 5, 2016
November 9, 2016
December 5, 2016
January 3, 2017
February 3, 2017
March 3, 2017
April 6, 2017
May 2, 2017

The landlord relies in support of these claims the copy the submitted statement.

The tenants dispute these claims stating that they have always paid their rent on time. The tenants also stated that they were allowed a 5 day grace period to pay the rent late as per the Act. The tenants provided affirmed testimony that they had proof of rent payments being paid on time, but did not submit any.

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 evidence of both parties and find that the tenants were served with the 1 Month Notice dated May 26, 2017 in person.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has claimed that the tenants have been repeatedly late paying rent and have provided copies of a tenant ledger statement which show that the tenants have been late paying rent on 11 occasions between July 2016 and May 2017. The tenants have adamantly disputed these claims, but have failed to provide sufficient evidence of rent paid on time. I also note that the tenants provided affirmed testimony that they were allowed to pay rent late based upon a 5 day grace period allowed under the Act. Both parties were cautioned that this 5 day period was referenced for a 10 Day Notice to End Tenancy for Unpaid Rent and would not be applicable in these circumstances for Repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38, Repeated late payment of Rent states in part,

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² 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...

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

As such, I find that the landlord have provided sufficient evidence of the tenants being repeatedly late paying rent. The tenants’ application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated May 26, 2017 is upheld.

As the effective end of tenancy date has passed, I find pursuant to Section 55 of the Act the landlord is granted an order of possession effective two days after it is served upon the tenants.

Conclusion

The tenants’ application is dismissed.

The landlord is granted an order of possession.

The tenants must be served with this order. Should the tenants fail to comply with the 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: July 14, 2017

Residential Tenancy Branch