



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenant requested:

- 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 and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice dated May 16, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recovery of the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy began on September 1, 2015, with monthly rent currently set at \$2,275.00 per month, payable on the first of each month. The landlord collected, and still holds, a \$1,100.00 security deposit.

The landlord submitted the 1 Month Notice to End Tenancy on the grounds that the tenant was repeatedly late paying rent. The landlord testified that the tenant has been repeatedly late in paying rent, which was paid by e-transfer. The landlord submitted a copy of the e-transfer history in his evidence, which supports the fact that the tenant was late on at least three occasions in the past year.

The tenant is not disputing the fact that she was repeatedly late in paying her rent, which she stated was paid by her husband. She testified that since the 1 Month Notice was issued the payments were made on time.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(b) the tenant is repeatedly late paying rent;...

The landlord provided undisputed oral testimony and written evidence to support that the tenant has been late in paying her rent on at least three occasions.

Although the tenant testified in the hearing that she now pays her rent on time, it is undisputed that the tenant has been late with her rent payments on at least three occasions. The repeated late rent payments meet the criteria for sufficient cause to end this tenancy under section 47(1)(b) of the *Act*. Therefore, I am dismissing the tenant's application to cancel the landlord's 1 Month Notice, and am granting the landlord's application to end this tenancy for cause.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find the landlord is entitled to recover the \$100.00 filing fee for this application. The landlord continues to hold the tenant's security deposit totaling \$1,100.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice. I find that the landlord's 1 Month Notice is valid and effective as of June 30, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim for recovery of the filing fee.

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 19, 2017

Residential Tenancy Branch