



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. Both parties agreed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also agreed that the landlord served the tenant with the submitted documentary evidence in person on August 29, 2017. No issues of service were made by either party. I accept the affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as claimed and I am satisfied that both parties have been served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

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 fixed term tenancy ending on September 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 10, 2015. The monthly rent is \$1,520.00 payable on the 1st day of each month. A security deposit of \$760.00 was paid on September 10, 2015.

On June 22, 2017, the landlord served the tenant with the 1 Month Notice dated June 22, 2017 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause include:

10 day notice served on January 3/2017; March 2/2017; April 2/2017.

Noise complains received on December 30/2016, smoke complains received on June 12/2017, June 20/2017.

The tenant provided undisputed affirmed testimony that he does not dispute that he was late on the 3 occasions as listed on the notice by the landlord. The tenant however does dispute that he has never been given notice of noise or smoking complaints by the landlord.

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 evidence of both parties and find that the tenant was properly served with the 1 Month Notice dated June 22, 2017 by posting it to the rental unit door.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payments 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

Both parties confirmed the landlord’s claim that the tenant was late paying rent as stated on the 1 Month Notice dated June 22, 2017. As such, I find that the landlord has provided sufficient evidence of the tenant being repeatedly late paying rent as claimed for January, March and April of 2017. The 1 Month Notice dated June 22, 2017 is upheld. The tenant’s application to cancel the 1 Month Notice dated June 22, 2017 is dismissed. The merits of the landlord’s claim of a breach of a material term of the tenancy were not addressed.

Pursuant to Section 55 (2) of the Act which states in part that if a tenant makes an application for dispute resolution to dispute a landlord’s notice to end tenancy the director must grant an order of possession of the rental unit to the landlord if, at the time of the scheduled hearing the director dismissed the tenant’s application or upholds the landlord’s notice. On this basis, the landlord is granted an order of possession.

As the effective date of the notice has passed, discussions with both parties have led to an agreement that the effective end of tenancy date would now be on September 30, 2017 as opposed to a 2 days’ notice.

Conclusion

The landlord is granted an order of possession effective on September 30, 2017.

This order must be served upon the tenant. Should the tenant 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: September 08, 2017

Residential Tenancy Branch