



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 7, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 1, 2017 (the "One Month Notice"); and
- other unspecified relief.

The Tenant attended the hearing on her own behalf and was assisted by a friend/advocate, J.R. The Landlords were both represented at the hearing by C.S. Both the Tenant and C.S. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package was served on the Landlords, in person, on July 11, 2017. C.S. acknowledged receipt On behalf of the Landlords. I find the Landlords were served with and received the Tenant's Application package on July 11, 2017. The Tenant also submitted a further documentary evidence package to the Residential Tenancy Branch on September 15, 2017. She testified it was not served on the Landlords. Accordingly, it has not been considered further in making this Decision. The Landlords did not submit documentary evidence in response to the Tenant's Application.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Background and Evidence

The Tenant submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the month-to-month tenancy began on April 1, 2012. Currently, rent in the amount of \$750.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$350.00 and a pet damage deposit of \$100.00, which the Landlords hold.

The Landlords claimed rent has been paid late repeatedly. Referring to his receipt book, C.S. testified that rent has been paid late in 2017, as follows:

RENT DUE	RENT PAID
January 1	January 5
February 1	February 1
March 1	March 1
April 1	April 3
May 1	May 1
June 1	June 23
July 1	July 15
August 1	September 12
September 1	September 12

As a result of these late payments, the Landlords issued the One Month Notice. The Tenant acknowledged receipt of the One Month Notice on July 6, 2017. C.S. advised that rent is currently up to date.

In reply to the testimony of C.S., the Tenant acknowledged that rent payments were made late as alleged. However, a number of reasons were provided for the late payments. Specifically, the Tenant testified that she suffers from fibromyalgia and is sometimes unable to make it to the bank, and that there were issues with social assistance payments being made on time. The Tenant's friend/advocate also submitted that the Landlords have issues with his cat, which the Tenant cares for several days per week.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause in the circumstances described therein. In this case, the Landlords issued the One Month Notice on the bases that the Tenant is repeatedly late paying rent, has seriously jeopardized the health or safety or lawful right of another occupant or the Landlords, and has put the Landlords' property at significant risk.

As summarized above, C.S. testified the Tenant has paid rent late on six occasions in 2017. The Tenant acknowledged the late payments.

Residential Tenancy Branch Policy Guideline 38 provides clarification with respect to ending a tenancy on the basis of repeated late payments of rent. It states:

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...

...

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

[Reproduced as written.]

In this case, I find that the Tenant has been repeatedly late paying rent. Accordingly, the Application is dismissed and the One Month Notice is upheld.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlords an order of possession, which will be effective on September 30, 2017, at 1:00 p.m.

As the tenancy is ending on the basis that the Tenants has been repeatedly late paying rent, it is not necessary for me to consider the other bases as indicated on the One Month Notice.

Conclusion

The Application is dismissed. Pursuant to section 55 of the *Act*, the Landlords are granted an order of possession, which will be effective on September 30, 2017, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 21, 2017

Residential Tenancy Branch