



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated August 3, 2017

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was hand delivered to the Tenant on August 3, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on August 14, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 3, 2017?

Background and Evidence

The tenancy began on September 1, 2015. The rent was \$800 per month plus utilities. It was increased to \$829.60 plus utilities per month commencing September 1, 2017. The tenant paid a security deposit of \$380.

The landlord testified there is a written tenancy agreement. However, he failed to provide a copy. The tenant disputed this saying there is no written tenancy agreement.

The tenant originally paid rent of \$800 on the first day of the month. However, in early 2017 she began paying \$400 every 2 weeks. The tenant testified there was an oral agreement she could pay every 2 weeks. The landlord disputes this.

The tenant testified the first time the landlord objected to the bi weekly payments was when he served her with the one month Notice to End Tenancy in early August.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent

Analysis:

I do not accept the submission of the landlord that, for the purpose of a 10 day Notice to End Tenancy that the tenant was late paying the utilities. The Act provides that a landlord can add a late utility payment to the rent if the tenant fails to make that utility payment within 30 after a written demand has been made. While the evidence is not as clear as it might but I determined the tenant made the utility payment within 30 days.

The landlord submits that he did not agree to the switch from paying the rent on the first day of the month to a bi-weekly schedule. I determined the tenant failed to prove the landlord agree to this. Much of her evidence related to the landlord not objecting to the switch. The failure of the landlord to object does not make it an agreement. .

Further, I determined that even if there was an agreement to switch from a monthly payment to a bi-weekly payment, the tenant failed to prove she made all of her bi-weekly payments on time. The tenant failed to provide sufficient evidence as to what dates the bi-weekly payments were to be made. In many cases the second payment was made after 14 days from the first payment. In those cases I determined even if there was an agreement to switch to a bi-weekly payment schedule, the second payment was late. The evidence produced shows the following late payments:

- The landlord served a 10 day Notice to End Tenancy on Tenant on January 4, 2017 that stated rent in the sum of \$800 due January 1, 2017 and utilities in the sum of \$232.91 was owed. The tenant gave a note to the landlord stating that she would pay the rent and utilities on January 13, 2017. The landlord testified the rent was paid on January 13, 2017 and the utilities were paid on January 22, 2017. I determined the rent for January 2017 was paid late. I further determined that as of that date the landlord expected the full rent of \$800 per month would be paid on the first of the month.
- The landlord testified the tenant paid \$350 of the rent for April on April 2, 2017. She paid \$450 on April 7, 2017. I determined that even if there was an agreement to make bi weekly payments of \$400 the tenant failed to make a full payment on April 2, 2017 and there was a late payment of the rent for April.
- The landlord testified the tenant paid the rent for May by making a \$400 payment on May 1, 2017 (a Monday) and a \$400 payment on May 19, 2017 (a Friday). I determined that even if there was an agreement to make bi weekly payments, the second payment for May was late.

- The landlord testified the tenant pay the rent for June by making a \$400 payment on June 3, 2017 (a Saturday) and a \$400 payment on June 19, 2017 (a Monday). I determined that even if there was an agreement to make bi weekly payments, the second payment for June was late.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I determined there was no agreement to switch to the bi-weekly payment schedule. Further, even if there was an agreement the tenant has paid the rent late on at least 4 occasions. The Policy Guidelines provide that 3 late payments are sufficient to support a Notice to End Tenancy for repeated late payment of rent. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. The landlord stated he was content that if he was successful that I should set the effective date of the Order of Possession for November 30, 2017. As a result I granted an Order of Possession effective November 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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: October 24, 2017

Residential Tenancy Branch