



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 13, 2017
- b. An order to recover the cost of the filing fee.

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 served on the Tenant by posting on August 13, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by registered mail to the landlord's address for business on August 14, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated August 13, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on November 15, 2015 after the parties entered into a one year fixed term tenancy agreement that became month to month after the expiry of the fixed term. The tenant testified she paid a security deposit of \$775 to the manager. The landlord stated he has no record of a security deposit being paid.

The present rent is \$1500 plus \$50 for a parking spot for a total of \$1550 payable in advance on the first day of each month.

Grounds for Termination:

Both parties failed to include a copy of the Notice to End Tenancy. However, they agreed that the Notice was in the approved form and identified the following ground:

- Tenant is repeatedly late paying rent

The landlord testified the Tenant has been late paying the rent on many occasions. The tenant responded saying she put her rent cheque in a mailbox on the first of the month and she has not control when the landlord deposits it. The landlord testified he owns many units and the cheques are always deposited on the first of the month when received. He further testified the tenant the Tenants has given him a cheque that has been dishonoured by the bank on four occasions as follows:

- August 2016 rent cheque returned NSF and replaced on August 10, 2016.
- February 2017 rent cheque dishonoured and not replaced. The tenant acknowledges the late payment but testified she replaced it with a bank draft.
- May 2017 rent cheque dishonoured and replaced by a cheque on June 2, 2017
- June 2017 rent cheque dishonoured and replaced by a cheque on June 23, 2017.

The landlord stated he is not relying on the August 2017 cheque as a late payment. However, he testified he uses the same bank as the tenant. He gave the August cheque to the bank shortly after receiving it but they would not process it until August 13, 2017 as there was not sufficient money in the tenant's account to cover the cheque.

Policy Guideline #38 provides as follows:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act² 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

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.

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy. The Policy Guideline provides that 3 late payments is sufficient to justify a Notice under this section. The landlord has proven 4 late payments based on the 4 NSF cheques. There may have been other late payments but it is not necessary to determine this.

The tenant submits the landlord is acting maliciously as they are in a dispute relating to other matters. Further, the landlord failed to give her notice that he intends to end the tenancy because of repeated late rent payments. The Act and Policy Guideline do not require that the landlord give notice. Further, the tenant’s dispute with the landlord is not relevant to whether the landlord has grounds to end the tenancy based on repeated late payment.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant’s application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I further order that the application of the tenant for the cost of the filing fee be dismissed.

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. I set the effective date of the Order of Possession for October 31, 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 26, 2017

Residential Tenancy Branch