



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlord's agent (the landlord), the tenant and the tenant's advocate 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. The advocate indicated that they would be the primary speaker for the tenant.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent by registered mail on October 18, 2017. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The advocate testified that evidence from the tenant was sent to the landlord by way of registered mail on November 22, 2017. The landlord stated that they did not have this evidence before them although the advocate provided the Canada Post tracking number to confirm this service. In accordance with sections 88 and 90 of the *Act*, I find the landlord was deemed served with the evidence on November 27, 2017, and I will consider the tenant's evidence.

The advocate testified that a second evidence package from the tenant was sent to the landlord by way of registered mail on December 05, 2017. The landlord stated that they did not have this evidence before them although the advocate provided the Canada Post tracking number to confirm this service. In accordance with sections 88 and 90 of the *Act*, I find the landlord was deemed served with this evidence on December 10, 2017, and I will consider the tenant's evidence.

The landlord testified that they sent their evidence to the tenant by way of registered mail on December 05, 2017. The advocate stated that they did not have this evidence before them although the landlord provided the Canada Post tracking number to confirm this service. In accordance with sections 88 and 90 of the *Act*, I find the tenant was deemed served with the landlord's evidence on December 10, 2017, and I will consider this evidence.

On December 19, 2017, the advocate also provided a submission to the Residential Tenancy Branch, dated December 16, 2017, to summarize the tenant's position. The landlord testified that they did not have this submission before them. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (*the Rules*) states that documentary evidence that is intended to be relied on at the hearing by the applicant must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlord with this submission in accordance with the *Rules* and I will not consider it.

The tenant acknowledged receipt of the One Month Notice which was sent to them by way of registered mail on October 11, 2017. The landlord provided the Canada Post Tracking Number for this registered mailing which shows the tenant signed for the One Month Notice on October 13, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice on October 13, 2017.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

The landlord provided written evidence that this tenancy began on October 01, 1995, with a monthly rent of \$380.00, due on the first day of the month. The landlord testified that the current monthly rent is now \$425.00. The landlord confirmed that they currently retain a security deposit in the amount of \$180.00.

A copy of the signed landlord's October 11, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by November 30, 2017, the landlord cited the following reason for the issuance of the One Month Notice:

Tenant is repeatedly late paying rent.

The landlord also submitted into evidence copies of 10 Day Notices and rent receipts for use and occupancy for the months of February 2017, May 2017, June 2017, August 2017 and October 2017;

The tenant submitted into evidence a title search for the residential premises and two letters of support from other occupants in the building with information regarding the tenant's tenancy over the time that the occupants have been in the building.

The landlord testified that the tenant has paid the monthly rent late five times in 2017 and referred to the 10 Day Notices to support their testimony. The landlord stated that after the most recent late payment of rent in October 2017, the landlord made the decision to issue a One Month Notice to the tenant for repeatedly late paying rent.

The advocate submitted that the tenant has lived in the building for 25 years and that the same landlord has been in place for the duration of the tenancy. The advocate stated that the tenant had a previous practise of paying the rent late, due to circumstances that were beyond the tenant's control, which was previously never an issue with the landlord. The tenant testified that they have always had difficulties paying their rent on time and that they never received a One Month Notice before.

The advocate submitted that the principle of estoppel is relevant to this situation as the landlord has accepted a pattern of late payment of rent and were obligated to provide notice when their position towards late payment of rent changed. The advocate contended that the landlord did not give any notice to the tenant that they were changing their policy on late payment of rent. The advocate referred to letters from other occupants submitted into evidence by the tenant which support the tenant's position that the landlord has accepted late rent payments as an established pattern.

The advocate stated that the tenant now has his rent paid directly from a Ministry of the Government of British Columbia, effective as of October 01, 2017. The advocate contended that the Ministry paid the rent in October 2017 and it was their payment on behalf of the tenant that was late.

The landlord stated that they are not aware of what the policy regarding late rent was prior to the landlord managing the building for the owner two years ago. The landlord stated that the tenant never addressed their late payment of rent with them. The

landlord further stated that the policy guidelines stipulate that after three late rent payments the landlord has the right issue a One Month Notice and that the landlord waited until the fourth time to issue it.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if they are repeatedly late paying the monthly rent. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on October 16, 2017, and since I have found that the One Month Notice was served to the tenant on October 13, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

The landlord bears the burden of demonstrating that the rent has been repeatedly late and that this late payment of rent is grounds for ending the tenancy.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has provided sufficient evidence that the tenant has been repeatedly late paying the rent for the year of 2017, however; I accept the advocate's submission that acceptance of late rent has been a standard operating practise of the owner for the duration of the tenancy. I find that the landlord did not dispute that acceptance of late rent may have been the practise of the owner in the past as the landlord stated that they were not aware of what the policy was prior to their commencing management of the residential premises.

I find that the two letters from other occupants in the building support the tenant's position that the owner had been conducting business in a certain manner for a number of years which allowed for the late payment of rent to accommodate the tenant's and other occupants' financial difficulties. I find that the principle of estoppel is applicable as the pattern of late rent was established and implied acceptance of this practise. I find that if the landlord was going to change their position from the previous operating practise, they were obligated to inform the tenant with clear written communication regarding their change in policy.

Based on the evidence and affirmed testimony, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

I note that the landlord has now indicated their intention to enforce their right of receiving the monthly rent on time and that the tenant should consider that they have been sufficiently cautioned that further late payments of rent could very well lead to a different result should the landlord issue a new One Month Notice for future late payments of rent.

Conclusion

The tenant is successful in their Application.

The One Month Notice of October 11, 2017, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

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: January 08, 2018

Residential Tenancy Branch