



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 29, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant confirmed receipt of the Landlord's documentary evidence. The Tenant did not provide any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

The Landlord issued the Notice because the Tenant is repeatedly late paying rent. The Landlord also selected other grounds on the Notice. However, this hearing focused on issues surrounding the repeated late payment of rent. The Landlord testified that he served the Notice to the Tenant on October 30, 2017, and the Tenant acknowledged receipt of the Notice on that day. Both parties agree that rent is due on the first of the month.

The Landlord testified that since July of 2017, the Tenant has been late paying rent at least 5 times (July, August, September, October of 2017, and January of 2018). The Tenant acknowledged paying rent late on these months, but stated that he has been going through a difficult time.

The Landlord stated that January 2018 rent is still unpaid, and he cannot continue to cover the Tenant for all the late payments. The Landlord stated he has been more than fair but he cannot allow the situation to continue.

The Landlord submitted into evidence copies of 5 different 10-Day Notice to End Tenancy documents. They were issued on the following months because the Tenant did not pay rent in full on the first of the month:

- July 2017
- August 2017
- September 2017
- October 2017
- January 2018

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of his **October 30, 2017**, Notice. In that Notice, the Landlord cited several reasons for ending the tenancy. However, my analysis will focus on the following reason for the issuance of the Notice:

Tenant is repeatedly late paying rent.

Both parties agree that rent is due on the first of the month. Further, at the time the Notice was issued in October of 2017, both parties agree that the Tenant had been late paying rent 4 times (July 2017-October 2017). I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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.

Given that the Tenant had paid rent late 4 times, as specified above, at the time the Notice was issued, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

As the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **2 days** after service on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: January 29, 2018

Residential Tenancy Branch