



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC
OPC MNR FF

Introduction

This hearing was convened in response to cross applications by the parties pursuant to the *Residential Tenancy Act* (the Act). The tenant applied to cancel the notice to end tenancy of the landlord. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause dated October 04, 2017 as well as a monetary order for unpaid rent and recover the filing fee. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, the parties confirmed receiving the application and evidence of the other. I have reviewed all testimony and admissible evidence submitted. However, only the evidence relevant to the issues and findings in this matter are described in this decision. The parties were provided opportunity to mutually resolve or settle their dispute under agreed terms, to no avail.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy began June 01, 2017. The rental unit is a lower suite in the landlord's house. The payable rent is \$950.00 per month due in advance on the 1st of each month. There is no written tenancy agreement in this matter.

On October 04, 2017 the landlord served the tenant with a Notice to End tenancy for Cause. The notice indicated the sole reason for ending the tenancy as pursuant to Section 47(1)(b) of the Act: *The tenant is repeatedly late paying rent.* The landlord did

not further explain the reason stated on the Notice to End in the Details of Cause, but instead entered details unrelated to the stated reason on the Notice to End. The parties agreed that the tenant was late paying rent for the month of August and September 2017 eventually satisfying the rent for both months on September 09, 2017.

The landlord claims the tenant then did not pay the rent for October 2017, whereas the tenant claims they paid it October 01, 2017 by placing the payable rent, in cash, placed inside an envelope and leaving the envelope in the shared laundry room on the washing machine for the landlord to collect - all of which the landlord disputes that this occurred. The landlord testified that in June 2017 was the only occurrence during the tenancy in which the tenant paid the rent by placing the cash rent on the washing machine. In contrast to the landlord's testimony the tenant testified that it is their common method of paying the rent.

The landlord testified the tenant then did not satisfy the rent for November and December 2017; in contrast to the tenant's testimony that they paid the rent for both months in December 2017 in the same way as they paid the rent for October 2017 by placing the cash in the laundry room. To the question by the Arbitrator of whether this method of paying the rent is one that is accepted by the parties as being secure the landlord stated that it can be. In contrast the tenant testified that it is not, testifying that the laundry area is easily accessed by various people visiting the landlord. The tenant identified several of the landlord's visitors who frequent the residential property and could have access to the laundry room, although stopped short of saying that someone other than the landlord accessed the cash left for rent.

The parties provided testimony unrelated to the reason stipulated in the Notice to End however clearly indicative of an ongoing disputatious landlord/tenant relationship.

Analysis

On preponderance of the parties' testimony and limited relevant document evidence I find as follows. I find the contrast in the parties' testimony concerning. Both parties were forthright in their testimony but clearly disagreed with the other's version of events. The evidence is undisputed that the rent was paid late for August and September 2017. In respect to the rent for October 2017 and subsequent months, I find the tenant's testimony and their reasoning behind routinely paying rent by placing the rent cash at risk in an area they themselves do not determine to be secure and not exclusive to the landlord, does not make sense. I find this especially does not make sense when other matters of late rent, claims of unpaid rent, and with other items being already at issue

between the parties, that the tenant would not rely on a more assured method of ensuring their payment of the rent. I find the tenant's testimony does not make sense. Therefore, on preponderance of the evidence before me and on balance of probabilities I prefer the landlord's evidence in regard to all matters of rent. Thus in respect to the rent for October 2017 I find on a balance of probabilities that the rent was not paid.

Residential Tenancy Policy Guideline **38: Repeatedly Late Payment of Rent**, in relevant part states as follows: **emphasis mine**

The Residential Tenancy Act¹ 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

On the preponderance of the evidence I accept the landlord's testimony and in so doing find they had *sufficient* cause to end this tenancy on the basis: *Tenant is repeatedly late paying rent* for the months of August to October 2017. Therefore, I uphold the landlord's Notice to End as valid; and effectively, the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an Order of Possession. As the effective date of the notice to end tenancy has already passed, the landlord is entitled to an order of possession effective two days after it is served on the tenant.

In respect to the landlord's claim of unpaid rent, again, having found I prefer the evidence of the landlord, I find that on a balance of probabilities the rent was further not paid for November and December 2017. As a result I grant the landlord a Monetary Order in the sum of the payable rent for the months of October, November and December 2017 in the amount of \$2850.00 (\$950.00 x 3). The landlord is further entitled to recover their filing fee of \$100.00 for a total award of **\$2950.00**. It is available to the landlord to seek any ongoing unpaid rent through dispute resolution.

Conclusion

The tenant's application is dismissed. The landlord's application is granted.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$2950.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding

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 03, 2018

Residential Tenancy Branch