



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FF, RP

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenant to cancel a Notice to End Tenancy, for emergency and general repairs and to recover the filing fee. .

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on December 12, 2017 in accordance with section 89 of the Act. The Landlords confirmed receiving the Tenant's application and hearing package.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Are there emergency and general repairs to be completed?

Background and Evidence

This tenancy started on July 4, 2012 as a 6 month fixed term tenancy and then continued on a month to month basis. Rent is \$1,500.00 per month payable on the 1st of the month. A security deposit of \$750.00 was paid at the start of the tenancy.

At the start of the conference call it was determined there was two issues in the Tenant's application. First if the tenancy is to continue and then if the Notice to End Tenancy is cancelled are there repairs to be completed.

The Landlord said they issued a 1 Month Notice to End Tenancy for Cause dated November 30, 2017 on November 30, 2017 by personal delivery with a witness. The Tenant said he received a proof of service on November 30, 2017 but he did not receive the 1 Month Notice to End Tenancy for Cause dated November 30, 2017 until 5 days later. The Landlord said they gave the Tenant the 1 Month Notice to End Tenancy on November 30, 2017 and again 5 days later as the Tenant request a second copy. The Tenant said the second copy was the only copy he received.

Further the Landlord said the Tenant has been late paying the rent for March, April, May, June, July in 2017 and the Tenant has not paid the rent for January, 2018. As a result the Landlord issued the Notice to End Tenancy with one of the reasons as repeatedly late rent payments.

The Tenant said the payments were late because his mother who lived with him past away in May, 2017 and he had trouble getting roommates to help with the rent. The Tenant said he did not know that repeatedly late rent payments was a reason to end a tenancy but he does understand.

To validate a Notice to End Tenancy for Cause only one of the reasons on page two of the Notice to End Tenancy has to be proven. As the Tenant is not disputing the rent has been paid late for 6 different months the Notice to End Tenancy is valid and in affect.

The Parties agreed to end the tenancy on January 31, 2018.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline # 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenant has not paid the overdue rent of \$1,500.00 and the Tenant does not have the right to withhold a part or all of the unpaid rent. Further I accept the Landlord's evidence that the Tenant has been late with the rent at least 5 other times in the past year. Given that the Tenant does not dispute the unpaid rent of \$1,500.00 and that the rent payments have been late on many occasions; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated November 30, 2017. Consequently I dismiss the Tenant's application without leave to reapply.

As the tenancy is ending I also dismiss the Tenant's application for repairs to the rental unit.

Further as the Tenant has been unsuccessful in this matter I order the Tenant to bear the \$100.00 filing fee which he has already paid.

As the Tenant has been unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on January 31, 2018.

Conclusion

An Order of Possession effective at 1:00 p.m. on January 31, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 2, 2018

Residential Tenancy Branch