



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution package and the tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy as well as the documentary evidence submitted by the landlord.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began in April 2013 as a month to month tenancy. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The original rental amount of \$700.00 was payable on the first of each month. The landlord increased the rent June 2016 from \$700.00 to \$750.00 and, in September 2017, the landlord increased the rent from \$750.00 to \$800.00. The tenant has paid the full amount of rent but, the landlord submits, the tenant repeatedly pays the rent late. The landlord continues to hold a \$350.00 security deposit paid on March 24, 2013 at the outset of this tenancy.

The landlord issued a 1 Month Notice to End Tenancy for Cause on November 8, 2017 indicating that the tenant repeatedly pays rent late. On receipt of the 1 Month Notice, the tenant applied to the Residential Tenancy Branch to cancel the notice. At this hearing, the landlord sought an Order of Possession if the tenant is unsuccessful in his application.

The landlord testified that the tenant paid rent late in January 2015 and July 2016. The landlord testified that, in the first several years of his tenancy, the tenant was fairly reliable in the payment of rent. However, the landlord testified that, from May 2017, the tenant has consistently paid his rent late. In May 2017, the tenant paid his rent in full on May 13, 2017 (having paid a portion of his rent early). In June 2017, the tenant paid his rent in 3 installments on June 1, June 4 and June 5 (2017). In July 2017, the tenant paid his rent on July 9, July 13 and July 14 (2017). In August 2017, the tenant paid his rent in accordance with the residential tenancy agreement between the parties. However, in September 2017, the tenant paid a portion of his rent on September 8 and the remainder of his rent on September 15 (2017).

The tenant did not dispute the breakdown of his rental payments as described by the landlord however he wanted to raise the following points at this hearing;

- the landlord often accepted his rent late and therefore the tenant believed late rent payments were acceptable to the landlord;
- the tenant always advised the landlord when he had to pay the rent late;
- the tenant believes the landlord has ulterior motives to end the tenancy;
- The landlord increased the rent in excess of the allowable annual rental increase amount under the Act.

Both parties agreed that the landlord had increased the rent beyond the allowable annual rental increase amount. Both parties agreed that the landlord has now reimbursed the tenant for the overpayment by way of two months of rent reduction in the amount equivalent to the overpayment.

The landlord testified that he may have accepted late rent in the past on occasion but that it has become increasingly regular for the tenant to pay late rent. As well, the landlord testified that he has provided emails and other warnings to remind the tenant that the rent must be paid in full on time and in accordance with the residential tenancy agreement. The landlord testified that he has made it clear to the tenant that, if he did accept late payments in the past, he no longer wishes to tolerate this pattern of payment.

The landlord and tenant agree that, in December 2017 and January 2018, the tenant paid the entire rent on time and in full.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to prove that the Notice to End Tenancy issued is both valid and justified. I find that the landlord has provided a valid notice to the tenant with the correct information and served the tenant with that notice in accordance with the Act. The tenant was present at this hearing to give evidence on his application to cancel the landlord's Notice to End Tenancy.

It is the burden of the landlord to provide proof that the tenant has repeatedly paid rent late. Based on the mainly undisputed testimony and evidence presented for this hearing by the landlord, I find that the landlord has evidence that the tenant has paid rent late on more than 3 dates in the last 8 months. The tenant does not dispute that he paid rent late in May 2017; June 2017; July 2017; as well as September 2017. Despite the tenants' testimony that the landlord has accepted his late rent in the past, it is ultimately the tenants' responsibility to pay rent in full and on time every month. I note that the months after September 2017, the tenant was not obliged to pay full rent – his rent was reduced as he had overpaid for rent as a result of the landlord's erroneous rental increase.

Section 26 puts responsibility for rent payments squarely on the tenant,

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

The landlord has applied to end this tenancy pursuant to a 1 Month Notice for Cause for repeatedly late rental payments by the tenant. Residential Tenancy Policy Guideline No. 38 provides guidance with respect to an application to end tenancy for late payment of rent. It states,

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

Based on the undisputed evidence at this hearing regarding the tenant's late payment of rent for the months of May, June, July 2017, and September 2017, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause based on the tenants failure to pay rent on time and in full. Payment on time and in full is the tenant's primary obligation under the Act. The landlord's acceptance of rent paid late does not equate to an acceptance of ongoing late rent. In this case, the landlord was clear with the tenant that the late payments must cease.

I also find that the landlord provided the tenant with some opportunity to tenant establish a record of on time rent payments and when the tenant failed to do so, the landlord issued the 10 Day Notice in a reasonable time after the continuation of the late rent payments.

I find that the tenant has repeatedly paid rent late. I find that the landlord's acceptance of rent does not negate the tenant's obligation on time and in full. I find that the landlord, with written

(email) and verbal warnings, the landlord put the tenant on notice that he would no longer accept late rent payments. I find that the tenant paid rent late recently and paid rent late on more than 3 occasions. I note that when the tenant paid rent in installments, he still paid less than the amount required for the original rental amount for this tenancy. For all of the reasons provided, I dismiss the tenant's application to cancel the Notice to End Tenancy and I find the landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 19, 2018

Residential Tenancy Branch