



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROP MGT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause.

The female Tenant stated that on November 27, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted with the Application for Dispute Resolution were personally served to an agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 22, 2018 the Landlord submitted 15 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was placed in the Tenants' mail slot on January 22, 2018. The female Tenant stated that this evidence was received on January 25, 2018. As the evidence was received by the Tenants, it was accepted as evidence for these proceedings.

On February 01, 2018 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was mailed to the Tenants on February 01, 2017. The female Tenant stated that this evidence was not received. As this evidence was not served to the Tenants in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and the Tenants do not acknowledge receiving this evidence, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence for these proceedings has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on October 01, 2016 and that the Respondent began managing the unit on July 01, 2017.

The Landlord and the Tenant agree that rent of \$1,600.00 plus hydro of \$200.00 is due by the first day of each month.

The Agent for the Landlord stated that on November 22, 2017 a One Month Notice to End Tenancy for Cause, dated November 22, 2017, was placed in the Tenants' mail slot. The female Tenant stated that this Notice was located on November 22, 2017.

The Landlord and the Tenants agree that the One Month Notice to End Tenancy for Cause declared that the Tenants must vacate the rental unit by December 31, 2017 because the Tenants have been repeatedly late paying rent.

The Landlord and the Tenants agree that rent was typically paid in cash. The Agent for the Landlord stated that receipts have always been provided since the Respondent began managing the residential complex on July 01, 2017. She stated that on occasion the Tenant would leave before a receipt was provided to the payee, in which case the receipt would be mail a copy of the receipt to the Tenants or deliver it to the rental unit.

The Agent for the Landlord stated that a receipt is always generated on the date of payment and the date of payment is automatically entered on the receipt by a computer.

The female Tenant stated that a receipt is not always provided when rent is paid. She stated that the rent receipts the Tenants submitted in evidence were handed to her, or the person paying the rent, at the time of payment.

The Agent for the Landlord stated that the Tenants did not pay rent, in full, for July of 2017 until July 04, 2017. The female Tenant stated that she does not have a record of this payment but that "it would have been paid on July 1st".

The Agent for the Landlord stated that the Tenants did not pay rent, in full, for August of 2017 until August 04, 2017. The female Tenant acknowledged that rent for August was not paid until August 04, 2017.

The Tenant submitted a copy of a rent receipt, dated August 05, 2017, which indicates rent of \$1,600.00 and utilities of \$200.00 was paid on August 05, 2017.

The Agent for the Landlord stated that the Tenants did not pay rent, in full, for September of 2017 until September 05, 2017. The female Tenant stated that rent for September was paid on September 01, 2017.

The Tenant submitted a copy of a rent receipt, dated September 05, 2017, which indicates rent of \$1,600.00 and utilities of \$200.00 was paid on September 05, 2017. The female Tenants stated that the date on the receipt is incorrect but she did not notice the incorrect date until the receipt was discussed during the hearing.

The Agent for the Landlord stated that the Tenants did not pay rent, in full, for October of 2017 until October 06, 2017. The female Tenant stated that rent for October was paid on October 01, 2017.

The Tenant submitted copies of two rent receipts, dated September 30, 2017, which indicates rent/utilities of \$1,720.00 was paid on September 30, 2017. The female Tenant stated that this was a rent/utility payment for October of 2017 and that the remaining amount due was paid on October 01, 2017.

The Agent for the Landlord stated that the Tenants did not pay rent, in full, for November of 2017 until November 06, 2017. The female Tenant acknowledged that rent for November was not paid until November 06, 2017.

The male Tenant stated that since he moved into the rental unit in September of 2017 the rent has always been paid on time. The Agent for the Landlord asked if rent was paid on time in November of 2017 he acknowledged that it has not been.

The Landlord submitted receipts that rent for December of 2017 and January of 2018 were accepted for "use and occupancy only".

The rent ledger submitted in evidence by the Landlord indicates, in part, that the following payments were made:

July 04, 2017 - \$1,800.00
August 04, 2017 - \$1,800.00
September 05, 2017 - \$1,800.00
September 30, 2017 - \$1,420.00 which was applied to rent for October of 2017
September 30, 2017 - \$300.00, \$180. 00 of which was applied to rent for October and \$120.00 of which was applied to utilities
October 06, 2017 - \$80.00 which was applied to utilities
November 03, 2017 - \$1,150.00 which was applied to rent for November
November 06, 2017 - \$650.00 which was applied to remaining rent and utilities for November

Analysis

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. On the basis of the undisputed evidence I find that the Tenants were served with a One Month Notice to End Tenancy for Cause in which they were informed that the Landlord wished to end the tenancy pursuant to section 47(1)(b) of the *Act*.

Residential Tenancy Branch Policy Guideline #38, with which I concur, suggests that three late rent payments are the minimum number sufficient to justify a notice to end tenancy pursuant to section 47(1)(b) of the *Act*.

On the basis of the undisputed evidence I find that the Tenants were obligated to pay monthly rent of \$1,600.00 and a hydro charge of \$200.00 by the first day of each month.

I favour the submission of the Landlord, who contends that rent for July was not paid until July 04, 2017, over the evidence of the Tenant, who contends it was paid on July 01, 2017. I favoured the Landlord's submission in this regard, in large part, because the rent ledger submitted in evidence shows that a payment of \$1,800.00 was paid on July 04, 2017. I find that the Tenant's testimony that the rent "would have been paid on July 1st" is simply not sufficient to refute the documentary evidence.

On the basis of the undisputed evidence I find that rent for August was not paid until August 04, 2017.

I favour the submission of the Landlord, who contends that rent for September was not paid until September 05, 2017, over the evidence of the Tenant, who contends it was paid on September 01, 2017. I favoured the Landlord's submission in this regard, in large part, because the rent ledger submitted in evidence shows that a payment of \$1,800.00 was paid on September 05, 2017 and the rent receipt submitted by the Tenant also shows the payment was made on September 05, 2017.

I find that the Tenant's testimony that the rent was paid on September 01, 2017 is not sufficient to refute the documentary evidence that indicates it was paid on September 05, 2017.

In determining the date rent was paid for September I have placed no weight on the Tenants submission that the receipt of September 05, 2017 was incorrectly dated, as this receipt is consistent with the rent ledger, it is a computer generated receipt which is less prone to errors, and the Tenants have submitted no evidence to support the female Tenant's testimony in this regard.

On the basis of the undisputed evidence I find that rent for November was not paid until November 06, 2017.

I find that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*,

as the Tenants have been late paying rent on at least four occasions. As I have determined that the Landlord has the right to end the tenancy on the basis of these late payments, I find that there is no need for me to determine in the Tenants were late paying the rent in any other month in 2017.

In adjudicating this matter I have placed little weight on the male Tenant's testimony that since he moved into the rental unit in September of 2017 the rent has always been paid on time, as he subsequently acknowledged that rent was not paid on time in November of 2017. Given this inconsistency, I cannot conclude that his testimony is particularly reliable.

As I have determined that the Landlord has the right to end this tenancy pursuant to section 47(1)(b) of the *Act*, I dismiss the Tenants' application to set aside the One Month Notice to End Tenancy. As the application to set aside the Notice to End Tenancy has been dismissed and the Notice complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on at **1:00 p.m. on February 28, 2018**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and 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: February 07, 2018

Residential Tenancy Branch