



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he received the 1 Month Notice sent by the landlord on January 9, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on or about January 16, 2018, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 11, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This six-month fixed term tenancy began on March 22, 2014. When the initial fixed term ended, the tenancy continued on a month-to-month basis. Monthly rent of \$650.00 was payable in advance on the first of each month. The monthly rent has increased to \$674.00 during the course of this tenancy. The landlord continues to hold the tenant's \$325.00 security deposit paid on March 22, 2014. The parties agreed that the landlord

has accepted payments from the tenant that enables the tenant to occupy the rental unit until at least March 31, 2018.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by January 31, 2018. In the 1 Month Notice, the landlord cited the following reason for the issuance of the Notice:

Tenant is repeatedly late paying rent.

The landlord entered into written evidence information with respect to the tenant's payment history. The landlord's written evidence maintained that the tenant has been late in making rent payments on seven of the last eight months of 2017. The landlord also gave undisputed sworn testimony that the tenant's rent for January 2018 was also late, despite being sent the 1 Month Notice on December 24, 2017. The tenant's only question regarding the landlord's evidence and testimony related to the landlord's claim that rent was late for August 2017; he agreed that rent was late for all of the other months.

At the hearing, the tenant testified that his rent was always paid in full by the end of each month. He maintained that he had sent the landlord text messages to advise the landlord that his rent would be late three or four days when this occurred. The tenant asserted that the landlord had never taken issue with his late payment of rent and, as a result, should not be able to end this tenancy on the basis of the late payment of rent.

Analysis

Section 26(1) of the *Act* establishes that "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."

Paragraph 47(1)(b) of the *Act* reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if...:*

(b) the tenant is repeatedly late paying rent;...

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby 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...

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...

In this case, I find that there has been a frequent and ongoing pattern of the tenant's late payment of rent. Although the tenant provided undisputed sworn testimony that he has been able to pay all of his rent before the end of each month on every occasion, monthly rent for this tenancy is due on the first and not the last day of each month. Under these circumstances, I dismiss the tenant's application to cancel the 1 Month Notice as I find that the landlord has provided sufficient evidence to justify the issuance of the 1 Month Notice for the late payment of rent.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I find that the landlord's 1 Month Notice complied with the form and content provisions of section 52 of the *Act* and I have dismissed the tenant's application to cancel the landlord's 1 Month Notice, I issue an Order of Possession in the landlord's favour in accordance with section 55(1) of the *Act*.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on

March 31, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the tenant has been unsuccessful in his application, I also dismiss his application to recover his filing fee from the landlord.

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: March 12, 2018

Residential Tenancy Branch