



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FF, MNDC, OLC, PSF, RP, RR.

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to recover the costs of emergency repairs, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, for the landlord to provide services and facilities agreed to, for general repairs and for a rent reduction.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 15, 2018. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented at the hearing.

At the start of the conference call the Arbitrator informed the Parties that the hearing will be focused on the Tenant’s application to dispute the One Month Notice to End Tenancy for Cause dated January 4, 2018. The other issues in the Tenant’s application, to recover the costs of emergency repairs, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to provide services and facilities agreed to, for general repairs and for a rent reduction are separate issues to the tenancy continuing or not.

Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says an Arbitrator may dismiss unrelated disputes within a single application. Consequently, I find that this hearing will deal with the Notice to End Tenancy only and the Tenant is at leave to reapply for the other claims in the application. The Tenants’ applications to recover the costs of emergency repairs, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to provide services and facilities agreed to, for general repairs and for a rent reduction are dismissed **with leave to reapply**.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2017 as a 1 year fixed term tenancy. The tenancy agreement states the rent is \$2,200.00 per month payable on the 31 day of the month. The Tenant said Landlord agreed the rent would be paid on the first day of each month. The Landlord agreed the rent was due on the first day of the each month. It should be noted that the tenancy agreement is missing the Tenant's name on page one but both parties agreed it was an omission on the tenancy agreement and they both signed the document on May 7, 2017. The Tenant paid a security deposit of \$1,100.00 and a pet deposit of \$200.00 on May 9, 2017. No move in condition inspection report was completed on move in.

The Landlord said that the Tenant has not paid the full rent on time throughout the tenancy. The Landlord continued to say the rent payments were made as follows:

Date	amount paid	amount unpaid
June 2, 2017	\$1,800.00	\$ 400.00
July 4, 2017	\$1,800.00	\$ 400.00
1 st part of August	\$ 960.00	\$1,240.00
September 8, 2017	\$1,700.00	\$ 500.00
October 10, 2017	\$2,000.00	\$ 200.00
November 5, 2017	\$ 800.00	
November 9, 2017	\$1,100.00	\$ 300.00
December, 2017 January, 2018 & February, 2018	The Landlord did not have the dates but said the rent was late and not paid in full.	
March, 2018 (late)	\$2,200.00	

The Landlord J.K. said he did not have his bank statements but he believed that these dates and amount are reasonably accurate. The Landlord M.C. said he received confirmation emails from J.K. when the rent was paid and these dates and amount are reasonably correct. The Landlord's said that even if the dates and amounts are not exact the rent was still paid late for 9 out of the 10 months of the tenancy. The Landlords said they have had enough and on November 17, 2017 they issued a 10 Day Notice to End Tenancy for unpaid rent. Following this they issued a 1 Month Notice to End Tenancy for Cause (repeatedly late rent payments) dated January 4, 2018. The Landlords said they want to end the tenancy and the reason is for repeatedly late rent payments.

The Tenant said she has been late with the rent on many months but she believed the Landlords had agreed to the rent being paid late. The Tenant said that at the start of

the Tenancy she told the Landlord her wages vary and so the rent may be paid a little after the first on occasion. The Tenant said that the Landlord agreed to this verbally.

The Landlords both said they did not agree to late rent payments. Landlord M.C. said that he understood the Tenant had some savings at the start of the tenancy so that the rent would be paid on time from her wages and savings.

The Tenant said the Landlord's are not telling the truth.

Further the Tenant said that in June and July, 2017 she reduced the rent by \$400.00 because she had to pay for house and carpet cleaning as the rental unit was not cleaned when she moved in. The Tenant said again this was a verbal agreement with the Landlord. The Tenant did agree the balance of the rent was paid late but the rent was paid in full after the deductions for cleaning.

The Tenant continued to say in August, 2017 she paid for landscaping in the amount of \$1,240.00 so she reduced the rent to \$960.00. Again the Tenant said the rent was paid in full after the deduction for landscaping. The Tenant agreed the rent was paid after the first day of the month.

The Tenant included many emails between her and the Landlord about repair or replacement issues as well as information about some rent payments. An email dated August 1, 2017 says the Tenant will transfer \$1,000.00 in a few days after receiving the bill (presumably the landscaping invoice). This would make the August, 2017 rent payment after the first of the month.

Further an email dated September 2, 2017 indicates the rent will be late but it will be paid in full by September 8, 2017. Again the Tenant agrees the rent was paid late but she assumed the Landlord was in agreement with the late rent payment.

In addition there is an October 2, 2017 email that says the rent will be paid on October 6, 2017. Again the Tenant believed the Landlords were in agreement with the late rent payment as they did not respond to the email. The Tenant said she did not get a written agreement for late rent payments as she thought it was OK with the Landlords and she had always paid the rent within the month.

The Tenant continued to say the November, 2017 rent was paid in full after she received the 10 Day Notice to End Tenancy for Unpaid Rent dated November 17, 2017. The Tenant said she had requested a free months rent from the Landlord because of all the issues and repairs in the rental unit which the Landlord had not attended to. The Tenant said she thought this was reasonable and warranted. The Tenant said she has been very patient with the Landlord and she has been a good tenant.

With regard to the rent payments for December, January, February and March the Tenant said the rent was paid after the first of each month but the rent was paid in full

less some deduction like the dishwasher that she had installed because the Landlord would not repair or replace the broken dishwasher in the rental unit.

The Landlords said they did not make any agreement with the Tenant for late rent payments. It should be noted there is a reply email from the Landlord to the Tenant regarding the August, 2017 email but it does not mention rent payments. Further there are no email replies from the Landlords regarding any late rental payments for September, October and November, 2017.

In reviewing the emails the Tenant submitted into evidence, I reviewed an email thread from August 3, 2017 in which the Landlord complains to the Tenant about the deductions she is making from the rent and that the Landlord has not received a full rent payment from the beginning of the tenancy. The Landlord says in the email that this is not right and he would like to end the tenancy.

The Tenant said in closing that she has been late with the rent on a number of occasions but she believes it was with the agreement of the Landlords. As such the Tenant said she believes she has not done anything wrong and she has been very patient with the Landlord regarding repairs and promises the Landlord made to her at the start of the tenancy. The Tenant said that if she is evicted it would be very unfair and a great hardship on her family.

The Landlords said in closing they did not make any late payment agreement with the Tenant and the Landlord expected the rent to be paid on time and in full. The Landlord said this has not happened and the Landlord said they want to end the tenancy for repeatedly late rent payments. .

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 have reviewed the affirmed testimony of the parties and the evidence that was submitted for the hearing. It is apparent that the Tenant and the Landlord have different views of what was agreed to at the start and during the tenancy. In situations like this I have to make a decision based on the evidence before me and testimony that can be

corroborated. Although the Tenant is insistent that the Landlord was aware that she would be late with rent payments and that the Landlord agreed to rent deductions for cleaning, repairs, utilities and landscaping there is no corroborative evidence to support the Tenant's position that the Landlords agreed to these things. In fact the email thread of August 3, 2017 indicates the Landlord wanted to end the tenancy because the Tenant was making deductions from the rent and not paying the rent on time and in full.

Consequently I accept the Landlord's testimony corroborated by the Tenant's email evidence that the Landlords did not make an agreement for regular late rent payments from the Tenant. As a result I find the Tenant has had more than 3 late rent payments without authorization from the Landlord since the start of the tenancy on June 1, 2017.

Given that the Tenant does not dispute there have been late rent payments on many occasions and the Tenant has no corroborative evidence to support there was an agreement for late rent payments; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated January 4, 2018. Consequently I dismiss the Tenant's application to cancel the Notice to End Tenancy without leave to reapply.

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

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect at 1:00 p.m. on March 31, 2018.

Conclusion

An Order of Possession effective at 1:00 p.m. on March 31, 2018 has been issued to the Landlords. 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 to cancel the Notice to End Tenancy 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: March 13, 2018

Residential Tenancy Branch