



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant personally on January 21, 2018 with a 10 Day Notice to End the Tenancy for non-payment of rent dated January 21, 2018 to be effective January 31, 2018. They said they also personally served on January 1, 2018 a One Month Notice to End Tenancy dated January 1, 2018 to be effective January 31, 2018. The effective date on the One Month Notice is automatically corrected to February 28, 2018 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant said they served the landlord with their Application for Dispute dated January 12, 2018 and with the Amendment dated January 24, 2018 by registered mail. The tenant applies pursuant to section 46 and 47 of *The Residential Tenancy Act* (the Act) to cancel both the Notices to End Tenancy.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on November 1, 2017, rent is \$ 1,000.00 and a security deposit of \$500 was not paid until February 9, 2018 after repeated demands by the landlord. The 10 Day Notice to End Tenancy was served because the security deposit had not been paid. The One Month Notice to End Tenancy was served for repeated late payment of rent. The landlord testified that November rent was not paid until November 10 and 18, 2017, December rent was not paid until December 13 and 14, 2017 and January rent was paid January 12, 2018 after many trips by the landlord to get it.

The tenant said that this landlord had been his landlord a number of years before and the arrangement was that he could pay rent every two weeks so he assumed the arrangement this time would be the same. The landlord said that he had only been a landlord to this tenant one month before he sold the place and he has no knowledge of the arrangements he had with the new owner. The landlord's wife explained the facts as follows:

- The landlord met with the tenants on October 28, 2017 to get the keys for the house and the landlord said he expected the \$1000 rent on November 1, 2017 together with the \$500 security deposit. An arrangement was made for the tenants to leave the monthly rent in a container in the wood shed where the landlord could pick it up at his convenience as he worked all over the island. The tenants agreed to this.
- The landlord had to visit the tenant at work in November because no rent or security deposit was left and the tenants had not called about it. The tenant made excuses.
- The landlord had to visit the tenant's workplace again November 10, 2017 when the tenant gave him an envelope which only contained \$500 as the landlord realized afterwards.
- Again the landlord visited the tenant's workplace and the tenant said he would pay by November 15, 2017. On the 15th, the tenant said he had left the money at home.
- On November 18, 2017, the landlord went to the tenant's workplace again and got the remainder of the rent for November but no security deposit.
- On December 1, 2017, the landlord found no rent money left at the house. The tenant made excuses on December 2 or 3 when visited at his workplace. He said a relative had put some money into their account and his wife got a full time job so rent should not be an issue now. The tenant agreed to meet the landlord at the bank the next day.
- On December 13, 2017, the landlord met him but he only gave him \$500 of rent.
- After a telephone call, the tenant gave the remaining \$500 on December 14, 2017.
- On January 1, 2018 no rent money or security deposit was available at the house. The tenant told the landlord that his wife had given him until January 9, 2018 to pay which she denies. The tenant was upset during the January 1, 2018 meeting, saying he had money for the security deposit but he never gave any. After many trips, the tenant finally paid the rent on January 12, 2018 and the security deposit on February 9, 2018.

On January 21, 2018, a walk through of the house was done and a proposed lease was left with the tenants. It was never signed. Clause 3 of that lease provided that rent was to be paid on the 1st of each month. The landlord said it was clear in November that he expected the rent on the first of November plus the security deposit.

The tenant said he called the office of the Residential Tenancy Branch and was advised that a 10 day Notice was not the correct notice to serve because the security deposit had not been paid. He said he misunderstood because in his last tenancy he did not pay a security deposit and had no lease. The tenant has paid rent on time since he filed his application on January 12, 2018 by paying it through the landlord's bank.

In evidence are the Notices to End Tenancy, copies of letters from the landlord requesting the security deposit, a condition inspection report and statements from the landlord regarding the events. The tenant simply made a statement on the facts as he explained them in the hearing.

Analysis:

A 10 Day Notice to End a Residential Tenancy is based on non-payment of rent. It does not include non payment of a security deposit. The non payment of a security deposit is listed as one of the causes under section 47 of the Act for a One Month Notice to End Tenancy. Therefore, I find the 10 Day Notice is void and of no effect.

In respect to the One Month Notice, section 47 of the Act lists causes, any one of which if proven, is sufficient cause to end the tenancy. I find the weight of the evidence is that the tenant has been repeatedly late in paying his rent. I find he paid rent late in November and December 2017 and January 2018. I find the landlord's evidence more credible that when they met in October 2017, he explained to the tenant that he expected rent and the security deposit to be left hidden in the woodshed on November 1, 2017 as agreed. I accept the landlord's evidence that he had no arrangement over 6 years ago in another tenancy that the tenant could pay rent every two weeks. He said he had sold that place within a month and the tenant may have had some arrangement with a new owner. In any case, I find the landlord's evidence credible that he explained the expectation of rent being due on the 1st of the month on October 28, 2017 when he met to give keys. I find also the tenant did not pay the security deposit within 30 days of being required to do so. I find the landlord's credibility supported by the fact that he had to make a special trip to the home to pick up the rent each month and did not want to have to do this twice.

Even if the tenant believed rent payment could be made every two weeks, I find he never paid a payment on the first of the month so this does not support his credibility when he said he expected to pay rent every two weeks. I find none of the tenant's reasons are valid reasons to not pay his rent on time. I have therefore dismissed his application to cancel the Notice to End the Tenancy. The tenancy was at an end on February 28, 2018 (as corrected).

Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective April 15, 2018 as requested. The landlord said he expects half of a month's rent to be paid for April.

The parties were advised to read the provisions in section 38 regarding the security deposit and act accordingly.

Conclusion:

I dismiss the tenant's application. His filing fee was waived.

I grant the landlord an Order for Possession effective April 15, 2018. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement

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 14, 2018

Residential Tenancy Branch