



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, RP, PSF, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for compensation in the amount of \$700.00 plus the recovery of the filing fee and for an order directing the landlord to comply with the *Act*, provide services, carry out repairs and reduce rent for the time the appliances were inoperative.

Both parties attended the hearing and had opportunity to be heard. The tenant acknowledged receipt of the landlord's evidence. The landlord testified that he had not received the tenant's evidence. Both gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation and the recovery of the filing fee?

Background and Evidence

The tenancy began on February 10, 2013. In May 2017, the current landlord purchased the rental unit. The rent continued at \$825.00 per month due on the first of the month.

On February 08, 2018, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reason;

- Tenant is repeatedly late paying rent

The tenant stated that he always had money for rent available on time but the landlord either picked it up late or they made an arrangement to meet at the landlord's convenience which was always after the first of the month.

The landlord testified that sometime shortly after the tenancy started, he gave the tenant his bank information so that the tenant could deposit rent into his bank account. The tenant stated that the information was inadequate and he contacted the landlord for proper information. The landlord stated that he took a photograph of his bank information and sent it to the tenant. The tenant argued that the information never worked and he was unable to deposit money into the landlord's account on the first of each month.

The tenant agreed that he paid rent after the day it was due multiple times but stated that it was due to the landlord's unavailability to pick up rent or meet at a designated spot to accept rent. The landlord filed copies of nine rent receipts starting June 2017. All of the receipts are dated between the second and ninth of each month.

The landlord stated that he verbally warned the tenant twice regarding late payment of rent and the tenant continued to pay rent after the first of each month.

The tenant also claimed \$700.00 as compensation for the period of time that the appliances were inoperative. The tenant stated that he replaced all the appliances in the rental unit. The landlord stated that he received only one complaint that one coil on the stove was not working and that the tenant asked for permission to replace the stove at the landlord's expense. The landlord stated that the tenant mentioned \$200.00 and the landlord agreed if the tenant provided proof of payment. The tenant did not give the landlord proof of payment and also did not file any with his application for dispute resolution.

The tenant went on at length about the condition of the appliances and wanted the landlord to pay him \$100.00 for each month that he was without the use of the appliances for a total compensation of \$700.00. The landlord agreed to pay the tenant \$200.00 and after much discussion the parties came to an agreement and the tenant agreed to accept a settlement in the amount of \$300.00.

The landlord also agreed to have a plumber check out the furnace for the cause of a sound that it makes when in use.

Analysis

In order to support the notice to end tenancy, the landlord must prove that one or more of the reasons for the notice to end tenancy applies. The only reason for the notice to end tenancy is the repeated late payment of rent. Based on the testimony of both parties and the rent receipts filed into evidence by the landlord, I find that the tenant was late paying rent on at least three separate occasions.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Based on the rent receipts filed into evidence I find that since June 2017, the tenant was late paying rent at least nine times. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

- 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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has proven the reason for the notice to end tenancy, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant has paid rent up to April 30, 2018 and therefore I will issue the order of possession effective this date. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven his case, he must bear the cost of filing this application.

As per the agreement entered into by the parties and described above, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective at **1:00 pm on April 30, 2018.**

I grant the tenant a monetary order in the amount of **\$300.00.**

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: April 19, 2018

Residential Tenancy Branch