



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC

Introduction

On April 19, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an Order of Possession for Breach of Vacate Clause, and an Order of Possession for Cause – Repeated Late Payment of Rent. The matter was set for a participatory hearing via conference call.

The Landlord (represented by Landlord PO and Landlord JO) and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the Notice of Hearing and the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord PO acknowledged the 2017 Legislative changes regarding fixed tenancies and that the claim for breach of vacate clause did not apply and was for information only. I find that the claim for the Order of Possession for Breach of Vacate Clause is dismissed without leave to reapply.

Issue to be Decided

Should the Landlord be granted an Order of Possession for Cause – Repeated Late Payment of Rent?

Background and Evidence

The Landlord PO and the Tenant agreed that the tenancy agreement between them began on May 1, 2017 and started out as a fixed-term tenancy with an end date of April 30, 2018 (and, if the tenancy continued, would continue as a month-to-month tenancy). The rent is \$810.00 plus \$20.00 for parking for a total of \$830.00 due on the first of each month. The Landlord is currently holding \$405.00 as the security deposit.

The Tenant agreed that she received the One Month Notice to End Tenancy for Cause – Repeated Late Payment of Rent on March 27, 2018 (the “Notice”), that had been attached to her front door. The effective vacate date for the Notice was noted as April 30, 2018.

The Landlord PO testified that the Tenant had paid rent late on at least seven occasions since February 2017. The Landlord PO referred to the “Resident Ledger” that documented each month that the rent was late and the subsequent \$25.00 late fee that was applied. The Landlord PO stated that the Tenant was regularly spoken to about the need to pay rent on time.

The Tenant testified that she did not dispute the Notice and has made arrangements with the Landlord to pay occupancy rent until May 31, 2018. The Tenant didn’t agree that she was late with the rent as often as the Landlord PO stated; however, did not provide any evidence to the contrary. The Tenant stated that her pension cheques came in late and as a result, this sometimes caused her to be late with payment of rent.

Analysis

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As the Tenant testified that she received the Notice on March 27, 2018, and that she did not apply for Dispute Resolution within 10 days or apply for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on April 30, 2018.

The Landlord has provided testimony and evidence that proves, on a balance of probabilities, that the Tenant has been late paying her rent on many occasions and four times since January 2018. For this reason and the fact that the Tenant has been conclusively presumed to have accepted the end of her tenancy by not disputing the Notice, I find that the tenancy must end and the Landlord granted an Order of Possession.

The Tenant is currently living in the rental unit and has paid occupancy rent for the month of May 2018. As a result, I find that the tenancy will end on May 31, 2018 at 1:00 p.m.

Conclusion

I am granting the Landlord an Order of Possession to be effective on May 31, 2018 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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.

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: May 22, 2018

Residential Tenancy Branch