



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On March 26, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the Act.

Section 47(5) of the *Act* states that “*If a tenant who has received a notice under this section 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.*” However, records indicate that the Notice of Hearing package was not available to the Tenant until April 17, 2018 due to an inadvertent error in the administrative process. As the Tenant disputed this Notice within the required time frame, I am satisfied that the Tenant disputed this Notice on time and the delay was no fault of the Tenant.

At the start of the hearing, I confirmed that the Tenant attended the hearing on her own behalf. I also confirmed that K.C. and J.F. attended the hearing and they advised that they were Property Managers for the Landlord, and that K.S. attended the hearing and advised that he was the Regional Administrator for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package in person on April 17, 2018 and the Landlord confirmed receipt of this package. Based on this oral testimony, and in accordance with sections 89 and 90 of the Act, I am satisfied that the Landlord was served with the Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

Background and Evidence

The Tenant advised that she served her written submissions to J.F. in person on May 4, 2018. The Tenant also advised that she received the Landlord's written submissions and they were posted on her door three days before the hearing. Upon reviewing the evidentiary submissions, neither the Tenant's evidence nor the Landlord's evidence appear to meet the requirements of Rules 3.14 and 3.15 of the Rules of Procedure. However, when asked, all parties confirmed receipt of the evidence and were prepared to respond to it. As such, I have accepted and considered all the written submissions before me.

K.S. stated that the tenancy started on December 1, 2015 as a fixed term tenancy for a term of one year. Rent was established at \$925.00 per month, due on the first day of each month and as of May 1, 2018, rent was increased to \$997.59 per month. A security deposit of \$462.50 was also paid. The Tenant confirmed these details.

K.S. testified that the Notice was posted to the Tenant's door on March 21, 2018 and the reason for the Notice being issued was due to repeated late payment of rent. K.S. advised that he has a record of the Tenant paying rent late repeatedly since January 2017 and he referenced in the written evidence copies of debit receipts for rent payments and multiple 10 Day Notices to End Tenancy for Unpaid Rent that were issued to the Tenant. K.S. gave affirmed testimony, referencing these receipts, in which the following late payments of rent were identified:

Date of Payment	Payment
January 10, 2017	\$900.00
February 24, 2017	\$1,080.00
September 7, 2017	\$250.00
September 24, 2017	\$500.00
October 1, 2017	\$400.77
October 5, 2017	\$100.00
November 21, 2017	\$800.00

November 27, 2017	\$800.00
December 12, 2017	\$140.00
December 14, 2017	\$306.15
December 27, 2017	\$700.00
January 6, 2018	\$274.23
March 12, 2018	\$700.00
March 21, 2018	\$299.23

K.S. submitted that the Tenant initially paid by automatic debit but cancelled that as of February 2017. He stated that the Tenant was given many opportunities to pay on time and he even had an Order of Possession from February 2017 that he chose not to enforce.

The Tenant stated that she was supposed to be paid for snow removal that she did for the Landlord and she cited the statement of earnings that she included in her written submissions. She submitted that there was nothing in writing from the Landlord authorizing this work to be deducted from rent; however, she stated that there were verbal agreements from previous managers confirming this.

K.S. confirmed that the Tenant helped shovel snow, that the Tenant was required to submit her hours, and that if she did submit her hours in a timely fashion, she would have been paid earlier. He stated that he cannot speak to any verbal agreements with previous managers; however, the property management company would not have verbal agreements with tenants.

The Tenant stated that the Landlord would charge extra fees that she should not have to pay for so she cancelled the pre-authorized debit payments. She testified that she goes directly into the Landlord's office to pay the rent, she tries to go in on the first of each month, and that she even tries to pay the rent early and in installments. She stated that when she attempts to pay rent, often the doors are locked, there is no staff available when they should be, that she attempted to pay November's rent five different times unsuccessfully, and that she was turned away one time when there was no debit paper in the payment machine. She stated that the Landlord has not provided an alternate method for her to pay the rent if she cannot get into the office on time and she has witnesses that have seen her attempt to pay the rent but the office was not open. When she does pay the rent, the Landlord does not show a ledger of what is owed so

she just pays what the Landlord tells her. She also stated that she asked the Landlord if she could go back to pre-authorized payments but the Landlord required her to sign a new tenancy agreement first. She stated that she would like to make one rental payment on the first of every month.

K.S. stated that the office is open Monday to Sunday from 10 AM to 6 PM and that there is a second office across the street that is open Monday to Saturday from 8 AM to 6 PM, where the Tenant served the Notice of hearing package. K.S. submitted that the Landlord has offered the Tenant many ways to pay the rent and even had an employee go to the Tenant's door with a debit machine to collect the rent. On this occasion, the Tenant paid the rent and was given a phone number to call for this repeated service in the future so rent could be paid at the Tenant's convenience.

The Tenant stated that if she is away when the offices are open, then she cannot go in and pay the rent. She also agreed that the Landlord had an employee collect rent from her door; however, she was doubtful that this person would return in the future if she was called outside of office hours.

The Landlord stated that the debit receipts are authentic and show that the Tenant does not pay on time and never pays rent in full. However, the Tenant has currently paid rent up to date and she has been given receipts for use and occupancy only since the Notice was served. Based on her history of payments, the Landlord is not willing to allow the Tenant to go back to pre-authorized payments.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I find that the Notice meets all of the requirements of section 52.

In addition, I note the wording of Policy Guideline #38 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...

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.”

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month and that rent was not paid in full on the first of each month more than three times since January 2017. The Tenant’s explanation that the office was either not open when she was available to pay the rent or that the staff were unable to take payment does not transfer responsibility for the Tenant’s ongoing pattern of paying rent after it became due to the Landlord. As per the *Act*, the Tenant must pay rent when it is due under the tenancy agreement, so other arrangements could clearly have been made by the Tenant to ensure that the rent was paid on time, especially given that it was the Tenant’s choice to cancel the pre-authorized payments. Moreover, I find that the Landlord’s efforts to have someone personally attend the Tenant’s door to collect rent and provide a phone number to be reached at to accept future months’ rent is a step that made paying rent on time easily accessible and was a service that would be considered above and beyond what is expected of a Landlord. When provided with this option, I do not find it reasonable that the Tenant did not utilize this easily accessible service for future rent payments even once after the initial interaction. I also do not find her explanation that she did not believe that this employee would be available when called to be a sufficient reason for not even attempting to pay future months’ rent on time. Furthermore, there is no substantiated evidence before me that the Tenant was allowed to deduct any services rendered from rent payments. Consequently, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I find that the Landlord is entitled to an Order of Possession that takes effect at 1:00 p.m. on May 31, 2018, the last day in which the Landlord’s acceptance of payment for use and occupancy only enables the Tenant to remain in this rental unit. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit by 1:00 p.m. on May 31, 2018, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on May 31, 2018. Should the Tenant or any occupant on the premises 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 24, 2018

Residential Tenancy Branch