



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenant to cancel a Notice to End Tenancy, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenant said he served the hearing documents to the Landlord by email on the RTB website. This method of service is not in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's Notice of Hearing by registered mail.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on December 1, 2015 as a one year fixed term tenancy with an expiry date of November 30, 2016. The tenancy then continued on a month to month basis. Rent is \$805.00 per month payable on the 1st of the month. The Tenant said he paid a security deposit of \$390.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay his rent on time for December 2017, January 2018 and March 2018. The Landlord submitted a 10 Day Notice for Unpaid Rent dated December 2, 2017 and rent receipts dated January 5, 2018 and March 2, 2018. The Landlord said the Tenant has been late with the rent payment many times and the management has a late fee clause in the tenancy agreement, but they do not condone any late rent payments. Further the Landlord said there have been some

behaviour issues with the Tenant that contributed to the issuing of the 1 Month Notice to End Tenancy for Cause. The Landlord said the Tenant was abusive to her in the laundry room to the extent that she was afraid. The Landlord said they included an apology letter from the Tenant for this incident which confirms the incident happened. The Landlord said they want to end the tenancy.

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The Tenant said he agrees that he has been late with the rent for December 2017, January 2018 and March 2018. The Tenant said it is because he has an unpredictable work schedule and it makes his rent payment late on some months. The Tenant continued to say that he is sorry for his behaviour in the laundry room and his apology letter is real. The Tenant said he would like to continue the tenancy and there will be no more behaviour issues from him and he will pay the rent on time. The Tenant said it is important to him to continue the tenancy as the location of the rental unit is close to his work and the things that he does.

The Landlord said they do not want to continue the tenancy, but they will agree to end the tenancy on August 31, 2018 if the Tenant pays the August rent and they can obtain an Order of Possession with an effective vacancy date of 2 days after service of the Order. The Landlord said they will not serve the Order until August 29, 2018 if the Tenant pays the August 2018 rent on time.

The Tenant agreed to the offer from the Landlord.

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 find that the Tenant has been late with the rent payment for December 2017, January 2018 and March 2018. Therefore the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause due to three late rent payments. The Tenant does not have the right to withhold a part or all of the rent when it is due. Given that the Tenant does not dispute the rent payments have been late on three occasions; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for

Cause dated May 17, 2018. Consequently I dismiss the Tenant's application 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 Landlord is entitled to an Order of Possession to take effect two days after service of the Order.

Conclusion

An Order of Possession effective 2 days after service of the Order has been issued to the Landlord. 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 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: July 16, 2018

Residential Tenancy Branch