



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIGHT PLASTERING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FFT

Introduction

This hearing was scheduled to consider the tenant's application for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*") and recovery of the filing fee pursuant to section 72.

Both parties were represented at the hearing by their respective agents who were given a full opportunity be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Service of documents was confirmed. The tenant's agent (the "tenant") confirmed receipt of the 1 Month Notice dated May 25, 2018 on June 1, 2018. The landlord's agent (the "landlord") confirmed receipt of the tenant's application for dispute resolution dated June 8, 2018 on or about that date. The parties each confirmed receipt of the other's evidentiary materials. Based on the undisputed testimonies I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

The parties agreed on the following evidence. This periodic tenancy began in 2011. The monthly rent is \$520.00 payable on the first of the month. The parties gave evidence that throughout the course of the tenancy the tenant has been late in paying rent on multiple occasions.

The landlord testified that the tenant has never been given authorization that they may pay their rent late. The landlord said that the instances of late payment have become more frequent and egregious in the last year. The landlord submitted into written evidence copies of receipts issued to the tenant for rent payment in the period between May, 2017 to March, 2018. During that time the tenant paid rent late on eight separate months. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on October 9, 2017. The tenant paid the October rent in full on October 19, 2017. The receipts issued by the landlord thereafter indicate that payments are being accepted for use and occupancy only.

The tenant submits that the landlord has accepted late rent payments throughout the tenancy and is now estopped from ending this tenancy on the basis of late payment. The tenant testified that they have never received indication that late payment of rent is unacceptable throughout the 7 year tenancy.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord indicated that the Notice to End was issued as the tenant has been repeatedly late paying rent and the tenant has allowed an unreasonable number of occupants in the rental suite.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenant has been late paying rent for the majority of the past year. I find that the tenant has been repeatedly late paying rent.

The tenant submits that the landlord has accepted the late rent payment and is estopped from enforcing the terms of the tenancy agreement. Estoppel is a legal principle whereby a party is barred from enforcing a contractual right when it is inequitable to do so due to the party's previous conduct or representations.

In order to successfully raise an estoppel defence, the party seeking to defeat the rights of the other must show:

1. that the party seeking to enforce their legal rights, took some action, whether by representation or conduct, with the intention that the other party rely on that action; and

2. the other party relied on that action to its detriment changing their course of action based on the representation.

In the present case I find that there is insufficient evidence that the landlord agreed to accept late payment of rent creating an estoppel. The conduct of the landlord in not issuing an immediate 10-Day Notice to End Tenancy for Unpaid Rent on every instance where rent was late is not conduct which I find to be a clear and unambiguous representation that the tenant may pay rent after the due date during this tenancy.

I find that the tenant has not met the evidentiary threshold necessary to establish a waiver and estoppel. If there was estoppel, it would be reasonable to expect that the tenant would have consistently paid the monthly rent after the first of every month. However, the undisputed evidence of the parties is that the tenant did not always pay the rent after the first and paid the full rent by the first on August, September and November, 2017. Based on the evidence I find the reasonable interpretation is that there was no estoppel, the tenant was aware of their duty to pay the rent by the first of each month, and failed to do so on some occasions.

For these reasons, I find that there was no estoppel which prevents the landlord from requiring full rent payment by the first of the month as set out in their tenancy agreement.

I accept the undisputed evidence of the parties that the tenant has been repeatedly late paying rent. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenants 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.

The tenants' 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: August 3, 2018

Residential Tenancy Branch