



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, PSF, FFT

Introduction

The tenant submitted an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated July 27, 2018 (“1 Month Notice”), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order for the landlord to provide services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenant and the landlord attended the hearing which was held by teleconference. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions to me. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (“Rules”). Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The tenant confirmed their email address at the outset of the hearing. The landlord called into the Residential Tenancy Branch immediately after the hearing and provided her email address. The parties confirmed their understanding that the decision would be emailed to them and that any applicable orders would be sent to the appropriate party.

In addition, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of

dispute on the application, the most urgent of which is the application to set aside the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice and the tenant's application to recover the filing fee at this proceeding. I will determine later in this decision if I provide leave to reapply for the balance of the tenant's application.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement was signed by the parties. A copy of was submitted in evidence. A month to month tenancy began on April 1, 2014. Monthly rent in the amount of \$900.00 was due on the first day of each month at the start of the tenancy and by mutual agreement of the parties as of July 1, 2016, the tenant was permitted to pay $\frac{1}{2}$ of the rent on the first day of each month and the other $\frac{1}{2}$ of the rent on the fifteenth day of each month.

The tenant confirmed that he was served on July 28, 2018 with the 1 Month Notice. The tenant disputed the 1 Month Notice on August 7, 2018 which is within the 10 day timeline provided for under section 47 of the *Act*. The effective vacancy date listed on the 1 Month Notice is August 31, 2018 which has passed. The parties agreed that the tenant has provided payment for "use and occupancy only" for the month of September 2018.

The 1 Month Notice alleges four causes which are:

1. Tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding the first cause, repeated late payment of rent, the landlord alleges the following:

Month	Date Due by Tenant and Amount	Date Paid by Tenant
1. March 2018	March 1, 2018 (\$35.00 rent increase amount)	March 2, 2018
2. January 2018	January 15, 2018 (1/2 of rent)	Within 5 days of January 15, 2018
3. January 2018	January 1, 2018 (1/2 of rent)	Within 5 days of January 1, 2018
4. July 2016	July 1, 2016	Within 5 days of July 1, 2016

Regarding #1 above, the tenant claims that he did not receive the Notice of Rent Increase document posted to his door. The landlord stated that it was posted to the tenant's door on November 21, 2017 which is the same way the previous Notice of Rent Increase was posted the year earlier and that she had a witness, PS with her as a witness. The tenant stated that he paid the \$35.00 owing the next day on March 2, 2018. The landlord had issued a 10 Day Notice for Unpaid Rent or Utilities ("10 Day Notice") dated March 2, 2018 and submitted that in evidence in support of her testimony.

Regarding #2 above, the tenant claims that the rent cheque was placed under the laundry room door and somehow was pushed back by the wind pressure due to someone opening a door on the other side of the laundry room door and that he did not see the rent cheque come back under his side of the laundry room door. The tenant testified that he placed the rent cheque on top of the dryer the next day, January 16, 2018. The landlord had issued a 10 Day Notice for Unpaid Rent or Utilities ("10 Day Notice") dated January 16, 2018 and submitted that in evidence in support of her testimony and agrees that the tenant paid the rent for this month within five days of being served with the 10 Day Notice.

Regarding #3 above, the tenant claims that the rent cheque was placed under the laundry room door and may have been pushed back by the wind pressure due to someone opening a door on the other side of the laundry room door and that he did not see the rent cheque come back under his side of the laundry room door. The tenant testified that he placed the rent cheque on top of the dryer the next day, January 16, 2018. The landlord had issued a 10 Day Notice for Unpaid Rent or Utilities ("10 Day

Notice”) dated January 2, 2018 and submitted that in evidence in support of her testimony and agrees that the tenant paid the rent for this month within five days of being served with the 10 Day Notice.

Regarding #4 above, the tenant claims he does not recall when he paid rent in July 2016 as it was too long ago. The landlord had issued a 10 Day Notice for Unpaid Rent or Utilities (“10 Day Notice”) dated July 2, 2016 and submitted that in evidence in support of her testimony and agrees that the tenant paid the rent for this month within five days of being served with the 10 Day Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – Although the tenant provided his version of why the monthly rent was late for the dates described above, I find the tenant has provided insufficient evidence to support that the reasons are justified under the *Act*. Section 26 of the *Act* requires that monthly rent be paid by the tenant on the date that it is due. Furthermore, Residential Tenancy Branch Policy Guideline #38 “Repeated Late Payment of Rent” (“policy guideline”) states that:

“...Three late payments are the minimum number sufficient to justify a notice under these provisions”

[Reproduced as written]

In addition, the policy guideline also states that:

“...Whether the landlord was inconvenienced or suffered damage as a result of any of the late payments is not a relevant factor in the operation of this provision.”

[Reproduced as written]

In addition, I have considered that the tenant failed to provide supporting evidence such as a witness that the tenant did provide his cheques under the laundry room door as claimed before a 10 Day Notice was issued by the landlord. It is the responsibility of the tenant to ensure the landlord has the rent cheque in their possession on the date that it is due. I find it more likely than not based on the evidence before me that the tenant has failed to pay rent on the date that it is due three times within an 18 month period given the four 10 Day Notices submitted and presented in evidence. As almost all notices including Notices of Rent Increase and 10 Day Notices were posted to the tenant’s door,

I prefer the testimony of the landlord over that of the tenant that the most recent Notice of Rent Increase was deemed served three days after it was posted on November 21, 2017 as claimed by the landlord. I find the tenant's recollection of events was vague compared to the landlord's recollection which was based on her written records and was specific.

Given the above, I find the tenant has breached section 26 of the *Act* on at least three occasions within an 18 month period and therefore, I dismiss the tenant's application in full, **without leave to reapply. I uphold** the landlord's 1 Month Notice which I find to be a valid 1 Month Notice that complies with section 52 of the *Act*.

As the tenant's application has been dismissed, I find it is not necessary to consider the other causes listed on the 1 Month Notice and do not provide leave to reapply for the severed portions of the application described above as I find the tenancy ended on August 31, 2018. Section 55 of the *Act* states:

Order of possession for the landlord

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.

[My emphasis added]

Based on the above, I grant the landlord an order of possession effective **September 30, 2018 at 1:00 p.m.**, as the landlord accepted payment for "use and occupancy only" from the tenant for the month of September 2018 and has not reinstated the tenancy.

As the tenant's application did not have merit, I do not grant the recovery of the cost of the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

The 1 Month Notice is upheld and is valid. I find the tenancy ended on August 31, 2018 which was the effective vacancy date listed on the 1 Month Notice.

The landlord has been granted an order of possession effective September 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 25, 2018

Residential Tenancy Branch