



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a one month notice to end tenancy for cause. The tenant also applied for an order setting conditions on the landlord's right to enter the rental unit and for a monetary order for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord stated that he wished to withdraw all reasons for the notice to end tenancy except for the reason of repeated late payment of rent.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant repeatedly late paying rent? Does the landlord enter the rental unit in contravention of section 29 of the *Residential Tenancy Act*? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on December 01, 2012. The current rent is \$900.00 due on the first of the month.

On June 13, 2018, the landlord served the tenant with a one month notice to end tenancy for cause. The effective date of the notice is August 01, 2018. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reason;

- Tenant is repeatedly late paying rent

The landlord stated that the tenant is consistently late paying rent and cited examples to support his testimony. The landlord has also filed copies of his bank statements to support his testimony that the tenant has been late paying rent on multiple occasions.

The tenant stated that at the start of tenancy the landlord would pick up rent in person but approximately two years ago, the parties decided that it would be more convenient to have the tenant deposit rent directly into the landlord's bank account. The landlord cited four months in 2017 and five months in 2018 that rent was paid by the tenant after the first of the month. The tenant stated that sometimes the bank was not open on the first of the month and therefore his payment was made on the first business day after the holiday.

The landlord stated that he provided the tenant with multiple verbal warnings but the tenant continued to pay rent after the first of the month. The landlord also spoke of other problems with the tenant regarding storage of his personal belongings in the yard and up against the window of another suite. The tenant denied the allegation. The landlord also stated that he had given the tenant a ten day notice to end tenancy for rent that was paid on April 04, 2018. The tenant denied having received that notice.

The tenant stated that the landlord always accepted rent after the first of the month and did not give him any warning that paying after the first was not acceptable. The tenant agreed that in 2018 he had paid rent on January 02, February 02, March 05, April 04 and May 02. The landlord also added that the current month's rent was paid on September 04. The tenant stated that he paid in person at the bank on September 01, but because of the long weekend, it was credited to the landlord's account on September 04.

The landlord requested an order of possession in the event I upheld the notice to end tenancy and he agreed to allow the tenant to stay until November 30, 2018.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies. Based on the testimony of both parties and the documents filed into evidence, I find that the tenant was late paying rent on at least five separate occasions in 2018. The tenant was also late on rent on four separate occasions in 2017.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Starting January 2018, the tenant was late paying rent at least five times. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has proven the reason for the notice to end tenancy, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The effective date of the notice to end tenancy is August 01, 2018, but the landlord has agreed to give the tenant additional time to look for accommodation.

I grant the landlord an order of possession effective by 1:00 pm on November 30, 2018. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven his case, he must bear the cost of filing this application.

The tenancy is coming to an end and therefore it is not necessary for me to address the tenant's application for an order restricting or setting conditions on the landlord's right to enter the rental unit.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 pm on November 30, 2018**.

The remainder of the tenant's application is dismissed.

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: September 06, 2018

Residential Tenancy Branch