



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHANNON SHORES RESORT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, MNDC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 9, 2018, to cancel a Four Month Notice for Landlord’s Use of Property (the “4 Month Notice”), for a monetary order for money owed or compensation under the Act, and to have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the notices to end tenancy. The balance of the tenants’ application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Should the 4 Month Notice be cancelled?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2011. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenants paid a security deposit of \$725.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on December 9, 2018; however, that date automatically corrects to December 31, 2018, as that is the earliest date the Act allows pursuant to section 53 of the Act.

The reason stated in the Notice was that the tenants have:

- Tenant is repeatedly late paying rent.

The landlord's agent testified that the tenants are repeatedly late paying rent. The agent stated that the tenants have been dividing the rent into two payments without their consent. The agent stated that attached to the Notice was a detail list showing when rent was paid by the tenants. Filed in evidence is a copy of the Notice and attachments.

The tenant testified that they have been late on two (2) occasions and they received from the landlord a notice to end tenancy for unpaid rent. The tenant agreed that they paid rent late for June 2018, with the last payment made on June 8, 2018, and rent was late for November 2018, with the last payment made on November 8, 2018. The tenant stated they have not paid rent for December 2018, because they are entitled to withhold the rent because they received the 4 Month Notice.

The tenant denies any other late payments of rent.

The landlord argued the tenant stated sending etransfers in April 2018, so it was easily traceable.

The tenant argued etransfers started in June or July 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have:

- Tenant is repeatedly late paying rent.

The Residential Tenancy Act provides that 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.

In this case, I accept the evidence of the landlord's agent that the tenants have been late paying rent as shown in the rent payment ledger. While the tenant admits they were late paying rent for June 2018 and November 2018, prior to the Notice being issued. However, the tenant denies they made any other late payments of rent.

I find it find it more likely than not that the tenant is not being truthful, as there appears to be a pattern in the payments, by splitting the payment into two and the last payments made is often on or about the 8th of each month. The tenants could have provided copies of their bank records to prove their version of events, and that they had the money when rent was due; however, the tenants provided no documentary evidence to support their version.

Furthermore, the tenants have not paid rent for December 2018; even if I accept the tenants submission this would be the 3rd admitted late payment.

While the tenant stated rent for December 2018, was withheld because they were entitled to do so because of receiving the 4 Month Notice; however, the 4 Month Notice was in dispute and the effective date of the 4 Month Notice was not in effect until January 31, 2019. The only rent the tenants would have been entitled to withhold was January 2019, rent. The tenants had no authority under the Act to withhold December 2018, rent.

I find the tenants have been repeatedly late paying rent. I find the Notice issued on November 9, 2018, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenants' application to the Notice issued on November 9, 2018. The tenancy will end on the corrected effective dated of December 31, 2018 in accordance with the Act.

Since I have dismissed the tenants' application, I find that the landlord is entitled to an order of possession effective **December 31, 2018, at 1:00 P.M.**, pursuant to section 55 of the Act. This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As the tenancy is ending based on the Notice, I find it not necessary to consider the merits of the 4 Month Notice issued on September 17, 2018. I find it appropriate to cancel the 4 Month Notice as it is no longer has any force or effect.

Conclusion

The tenants' application to cancel the Notice, issued on November 9, 2018 is dismissed. The 4 Month Notice issued on September 17, 2018, is cancelled.

The landlord is granted an order of possession

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: December 04, 2018

Residential Tenancy Branch