



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on October 31, 2018, and amended on November 1, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 25, 2018 (the "One Month Notice"); and
- a monetary order for money owed or compensation for damage or loss.

The Tenants attended the hearing. They were accompanied by T.G., an emotional support person, and S.C., an advocate. V.G. attended the hearing as agent for the Landlord. She was accompanied by D.M. for support. All those giving oral testimony provided a solemn affirmation.

On behalf of the Tenants, S.C. advised that the Landlord was served with the Application package by registered mail and the amendment in person. V.G. acknowledged receipt of both packages on behalf of the Landlord. No issues were raised during the hearing with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find the Application package and the amendment were sufficiently served on the Landlord for the purposes of the *Act*.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified the first package was served on the Tenants by registered mail. S.C. acknowledged receipt on behalf of the Tenants. No issues were raised during the hearing with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find the Landlord's first documentary evidence package was sufficiently served on the Tenants for the purposes of the *Act*.

A second documentary evidence package was served on the Tenants in person on November 27, 2018. Although there was some discussion during the hearing about whether or not it was served in accordance with the Rules of Procedure, I note that a respondent's documentary evidence must be served on the applicant and submitted to the Residential Tenancy Branch no less than 7 days before the hearing. In this case, I find the Landlord's documentary was served on the Tenants and received at the Residential Tenancy Branch on time. However, I find it was not necessary to consider the Landlord's second documentary evidence package in reaching my decision.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2016. Rent in the amount of \$716.10 per month is due on the first day of each month. The Tenants paid a security deposit of \$350.00, which the Landlord holds.

The Tenants' Application confirms the One Month Notice was served on and received by the Tenants on October 25, 2018. The One Month Notice was issued on the basis that the Tenants are repeatedly late paying rent.

There is no dispute from the Tenants that rent has been repeatedly paid late. As described in a letter prepared by the S.C., the Tenants' advocate, rent was paid late repeatedly throughout the tenancy. More recently, however, the Tenants paid rent late on March 3, April 6, July 3, July 15, August 3, September 4, October 6, and October 12, 2018. The letter prepared by S.C. also confirms receipt of 3 notices to end tenancy for unpaid rent or utilities on April 5, July 3, and August 11, 2018. I note that V.G. testified the August 11 notice to end tenancy was issued in relation to an outstanding payment

dating back to August 2017. Ultimately, the Landlord issued the One Month Notice, which was received by the Tenant on October 25, 2018.

Despite the Tenants' admission that rent has been paid late on many occasions throughout the tenancy, S.C. submitted that the Landlord is estopped from ending the tenancy on this basis as the Landlord established a pattern of accepting late rent payments throughout the tenancy.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the basis that the Tenants have been repeatedly late paying rent.

The Tenants did not dispute that rent has been repeatedly paid late throughout the tenancy. The Tenants' own evidence confirmed, and I find, that the Tenants paid rent late in March, April, July, August, September, and October 2018. However, S.C. submits that the Landlord is estopped from ending the tenancy on this basis as he established a pattern of accepting late payments throughout the tenancy.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. However, in this case, I find that although the Landlord accepted late rent payments throughout the tenancy, this did not negate his right to be paid in accordance with the agreement. To do otherwise would result in uncertainty about when rent is due. Further, the Tenants' own evidence confirms notices to end tenancy for unpaid rent or utilities were issued on April 5, July 3, and August 11, 2018, although I note the August 11 notice was in relation to an outstanding payment from 2017. In any event, these notices could only have served as reminders that rent is due on the first day of each month, as per the tenancy agreement between the parties.

To summarize, I find the Tenants have been repeatedly late paying rent. The parties agreed that rent is due on the first day of each month, and it has routinely been paid late. Further, I find the Tenants' submission that the Landlord is estopped from ending the tenancy on the basis of late payments cannot succeed. The Tenants acknowledged rent is due on the first day of each month. In addition, I find the notices to end tenancy

for unpaid rent or utilities, receipt of which was acknowledge by the Tenants, served as reminders that the Landlord required rent to be paid on time. As a result, I find that the Application to cancel the One Month Notice is dismissed and the One Month Notice is upheld.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an order of possession which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 7, 2018

Residential Tenancy Branch