



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on December 10, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenants and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy.

The Landlord stated that one of the reasons he issued the Notice is because the Tenants are repeatedly late paying rent. The Landlord testified that he served the Notice, in person, to the Tenants on October 24, 2018, and the Tenants acknowledged receipt of the Notice on that day. Both parties agree that rent is \$954.41 and is due on the first of the month.

The Landlord stated that Tenants have paid rent late numerous times in the past year. The Landlord provided copies of email money transfers from the Tenant to highlight when the payments were made. The Landlord also provided copies of several 10 Day Notices from the past couple of years to show which months' rent was late. In the last year, the Landlord highlighted that rent was late for December 2018, November 2018, October 2018, September 2018, April 2018, and January 2018.

The Tenants acknowledged paying rent late at least 3 times this last year but stated that they usually paid in full within 5 days of getting the 10 Day Notices. The Tenants did not feel this was a big deal because the Landlord let it happen so many times.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of her Notice. The first issue the Landlord identified on this Notice was:

Tenant is repeatedly late paying rent.

Based on the evidence before me, it is clear that rent is due on the first of the month. Further, it is clear the Tenants have been late paying rent multiple times in the last year (more than 3). I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide 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.*

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Based on the evidence before me, I find there is substantially more than 3 times where rent has been paid late. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. Since the Tenants have paid rent until the end of December 2018, I find the Landlord is entitled to an order of possession effective **December 31, 2018, at 1pm** after service on the Tenants.

Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **December 31, 2018, at 1pm** after service on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 11, 2018

Residential Tenancy Branch