



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing fee paid for this application.

The Landlord and an agent (the “Landlord”) were present for the teleconference hearing, as was the Tenant and an agent who stated she also resided in the rental unit (the “Tenant”). The Landlord confirmed that he received a copy of the Notice of Dispute Resolution Proceeding package. The Tenant confirmed receipt of a copy of the Landlord's evidence. The Tenant submitted the One Month Notice into evidence. Neither party brought up any concerns regarding evidence and therefore I find that both parties were duly served as required.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties agreed that the tenancy began in March 2016. Monthly rent is \$1,000.00, due on the first day of each month. A security deposit of \$450.00 was paid at the outset of the tenancy. The tenancy began with an ex-partner of the Tenant and the Tenant stated that he moved in permanently within the last year. His ex-partner moved out at the end of August 2018.

The Landlord testified that on December 6, 2018, he served the Tenant with a One Month Notice by posting it on the Tenant's door.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

The Landlord provided further details on the One Month Notice as follows:

Rent paid late since July 2018 to present. Ten Day Notice to End Tenancy issued Oct. and Nov. Tenants in both other rental units in the Triplex have been disturbed by late night visitors on foot and via vehicles. Neighbors expressed concern over suspected drug use/distribution. Laundry room door left unlocked allowing non tenants to enter when not at home. Warnings issued. Dog waste not removed from back yard in a timely fashion.

(Reproduced as written)

The Landlord stated that he has received multiple complaints from other residents of the residential property regarding disturbances caused by the Tenant. The Landlord stated that this includes smoking and drug use on the property, late night parties, banging on the doors of other residents and leaving the laundry room door unlocked causing a potential risk to the property.

The Landlord submitted a number of emails from other residents of the residential property from October and November 2018. In the emails, the other residents note concerns regarding parties, drug use and smoking on the property, excessive noise and concerns of garbage left on the property. The Landlord submitted a photo showing an ashtray outside the door of the rental unit.

The Landlord also submitted a letter dated October 28, 2018 in which he warns the Tenant regarding the concerns brought up from other residents and notes that the Tenant had been previously warned regarding not smoking on the property. In a letter dated November 23, 2018, the Landlord warns the Tenant regarding complaints of illegal drug activity on the property.

The Tenant testified that the issues brought up by the Landlord were issues that were occurring when his ex-partner resided in the rental unit. He stated that he received a warning from the Landlord to not smoke in the rental unit and since then has not done so. He noted that the upstairs tenant smokes as well, so he is not sure why the Landlord is assuming that the smell of smoke is caused by him. The Tenant also noted that the Landlord may be smelling cannabis on the property, but it is not from him.

The Tenant further stated that the other tenants on the residential property have access to the laundry room as well so may be responsible for leaving it unlocked. He noted that he has personal belongings in there so ensures that it is secure.

The Landlord also provided testimony that the Tenant has paid rent late in August 2018, October 2018, November 2018 and December 2018. He also stated that rent has not

been paid for January 2019. The Landlord submitted receipts into evidence that show a rent payment on August 6, 2018, October 14, 2018, November 5, 2018 and December 2, 2018. The Landlord submitted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated October 8, 2018, a 10 Day Notice dated November 2, 2018 and a 10 Day Notice dated January 2, 2019.

The Tenant stated that his ex-partner was still residing in the rental unit until the end of August 2018 and therefore was also responsible for the August 2018 rent. He stated that there were some issues that occurred in October and November 2018 that caused rent to be paid late. For December 2018, they stated that they notified the Landlord on November 27, 2018 that they had the rent money, but they were not able to withdraw the full rent amount from the bank which caused the full amount to be paid late. The Tenants agreed that they have not yet paid rent for January 2019.

The Landlord stated that the Tenants called him in November 2018 and advised him that they would be paying the full December 2018 rent right away, although it was not paid as due on the first of the month. The Landlord stated that he was unaware that the previous tenant was moving out and that the Tenant would be continuing the tenancy on his own. He was also not aware that there was a second occupant in the rental unit. The parties agreed that no new tenancy agreement was signed when the Tenant's ex-partner moved out.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the One Month Notice was posted on the Tenant's door on December 6, 2018 and the Tenant filed an Application for Dispute Resolution on December 11, 2018, he applied within the time allowable under the *Act*. As such, the matter before me is whether the One Month Notice is valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenant due to repeated late payment of rent, as well as due to claims of significant and unreasonable disturbance of others, and illegal activity that was causing concern for the quiet enjoyment of others and risk to the residential property.

The Landlord testified as to late rent payments in August 2018, October 2018, November 2018 and December 2018. Although there was also testimony regarding unpaid rent for January 2019, as the One Month Notice was served on December 6, 2018, I do not find this to be relevant in determining whether the Landlord had cause to serve the Tenant with a One Month Notice in December 2018. I accept the receipts submitted into evidence which show that rent was paid late for August, October, November and December 2018.

While the Tenant testified as to reasons why the rent was paid late, the parties agreed that rent is due on the first day of each month. Section 26(1) of the *Act* states that rent must be paid when it is due. Therefore, I find that rent paid on any day after the first of the month is considered late. The testimony of the parties indicate that the Tenant took over the original tenancy agreement when his ex partner moved out and therefore is responsible for continuing to pay rent as due under the original tenancy agreement.

Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent states that three late payments of rent may be sufficient to justify ending the tenancy with a One Month Notice. This Policy Guideline further notes that the late payments do not have to be consecutive to be considered “repeated”.

I accept the testimony and evidence before me that establishes that rent has been paid late four times between August 2018 and December 2018 when the One Month Notice was served. As such, I find that the Landlord had cause to end the tenancy for repeated late payment of rent. Accordingly, I find that the One Month Notice dated December 6, 2018 is valid.

As I have found that the Landlord has grounds to end the tenancy with a One Month Notice due to repeated late payment of rent, I do not find it necessary to determine whether the other grounds on the One Month Notice are valid.

The Tenant’s application to cancel the One Month Notice is dismissed and the One Month Notice dated December 6, 2018 is upheld. As the One Month Notice complies with the form and content requirements of Section 52 of the *Act*, pursuant to Section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession. Therefore, the Landlord is granted an Order of Possession effective January 31, 2018, the effective date of the One Month Notice.

As the Tenant was not successful with the application to cancel the One Month Notice, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **January 31, 2018 at 1:00 pm**. This order must be served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed 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: January 28, 2019

Residential Tenancy Branch