



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties confirmed that they had exchanged their documentary evidence.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

Both parties agree to the following. Monthly rent is set at \$2300.00, payable in advance on the first of each month.

The landlord's 1 Month Notice cited the following reasons for seeking an end to this tenancy for cause.

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

put the landlord's property at significant risk.

Tenant has caused extraordinary damage to the unit/site or property/park.

Security or deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant has been late in paying her rent and utilities 14 out of the 15 months of this tenancy. The landlord testified that the only time that the tenants paid the rent on time was the first month when they moved in. The landlord testified that he exercised compassion to assist the tenant and her family but the payments have been made later and later each month. The landlord testified that the tenant smokes in the unit, has a pet that has caused damage and that she maintains the unit in a very poor and unsanitary state. The landlord testified that the smoking has caused extensive damage to the unit and that the overall damage is estimated to be about fifteen thousand dollars.

The tenant gave the following testimony. The tenant testified that she has been late in paying the rent and utilities every month. The tenant testified that the amount of rent is a lot of money to come up with at once. The tenant testified that she usually paid the rent by the fifteenth of each month and that in terms of utilities she would catch up the following month. The tenant testified that she does not smoke in the unit or have a pet. The tenant testified that she might not be a great housekeeper but it's not as bad as portrayed by the landlord.

Analysis

The landlord needs only demonstrate that one of the reasons identified in the 1 Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on 14 successive occasions from January 2018 – February 2019. In the tenants own testimony she confirmed that "that sounds right".

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late...

Both parties confirmed that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at 14 successive occasions. The tenant paid February 2019's rent on February 10th, 2019 despite being given a notice for repeated late rent payments. It is clear that the tenant has not corrected her behaviour and that the pattern has not improved.

For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent. As section 47 of the *Act* only requires that one of the reasons cited in a 1 Month Notice are valid, I have not considered the landlord's secondary reason for seeking an end to this tenancy.

Section 55 of the *Act* reads in part as follows:

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.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1)

of the *Act*. The landlord advised that he does not seek an immediate order of possession even though he is entitled to one. The landlord advised that he is “okay” with a later date. Based on the landlords’ submission and the late timing in the month for this hearing, I find that the landlord will be entitled to an order of possession for March 31, 2019.

The tenant has not been successful in this application.

Conclusion

I dismiss the tenant’s application to cancel the 1 Month Notice and to recover the filing fee.

The One Month Notice to End Tenancy for Cause dated December 31, 2018 is of full effect and force. The tenancy is terminated. I grant an Order of Possession to the landlord effective at **1:00 p.m. March 31, 2019** on the tenants. Should the tenants 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: February 22, 2019

Residential Tenancy Branch