



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lantern Properties Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 12, 2019. The Tenant 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 pursuant to section 47 (the "Notice")

The Landlord's Agent (referred to as the "Landlord") appeared at the hearing. The Tenant also attended the hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties acknowledged 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 relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant 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, but in the hearing, he stated that he abandons all of the grounds on the Notice with the exception of the ground for repeated late payment of rent. The Tenant acknowledged receiving the Notice on January 16, 2019. The Tenant provided a copy of the tenancy agreement into evidence which shows that rent is due on the first of the month.

The Landlord testified that the Tenant used to be an employee of the Landlord's and indicated their relationship has soured due to a variety of issues. The Landlord stated that, as a previous property manager/employee, the Tenant should know that he was required to pay his rent on time. The Landlord stated that he did not issue any 10 Day Notices to End Tenancy for Unpaid Rent leading up to this Notice because it was somewhat awkward with him being employed by the Landlord. The Landlord stated that it was made clear that late rent payments were not acceptable by anyone living in the building, including the Tenant.

The Landlord stated that the Tenant has been late paying rent many times in the last couple of years. The Landlord provided an accounting printout and some bank deposit slips (where the Tenant went to deposit rent into the Landlord's account) showing that the Tenant paid rent late as follows:

- January 4, 2017
- May 4, 2017
- June 2, 2017
- September 5, 2017
- November 2, 2017
- February 5, 2018
- March 2, 2018
- April 3, 2018
- June 4, 2018
- July 3, 2018

The Tenant stated that he paid rent late a few times because when he was working for the Landlord, he would often prioritize managing the building, rather than paying rent immediately when it was due. The Tenant stated that he would go and collect rent for other rental units, and he would often make a bank trip after this where he would

deposit his own rent. The Tenant stated that this occurred a few days after it was due on some occasions. The Tenant pointed out that the Landlord has never served him with a 10 Day Notice, which should have happened if they were upset about the late rent payments.

The Landlord stated that just because a 10 Day Notice wasn't issued, it does not mean they were okay with him paying rent late, and as a building manager he should have known that rent needs to be paid on time.

Analysis

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

The Tenant acknowledged receiving the Notice on January 16, 2019. In that Notice, the Landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

As per the tenancy agreement provided into evidence, it is clear that rent is due on the first of the month. Further, it is clear the Tenant has been late paying rent multiple times. 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.

I acknowledge that some of the late rent payments date back several years and the Tenant explained why it was late on some occasions. Although I note there has not been any 10 Day Notice's issued by the Landlord, I do not find this shows they were okay with rent being paid late. In fact, the accounting printout shows these late rent payments were flagged, as were the incomplete payments. Based on the evidence before me, I find there is evidence to show that the Tenant has paid rent late around 10 times over the last 2 years, including 4 times within the last year. As such, I find the

Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

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, effective **two days after service** on the Tenant.

Since the Tenancy is ending due to repeated late payment of rent, it is not necessary to consider the remaining grounds on the Notice.

Conclusion

The Tenant's application to cancel the Notice is dismissed, in full, without leave.

The Landlord is granted an order of possession effective **2 days** after service on the Tenant. This order must be served on the tenant. If the Tenant fails 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: March 14, 2019

Residential Tenancy Branch