



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 9, 2019 (the "Application"). The Tenant applied to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated December 31, 2018 (the "One Month Notice"), as well as an order granting the recovery of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant as well as the Landlord attended the hearing, each providing a solemn affirmation at the beginning of the hearing.

The Tenant testified that she served the Application and documentary evidence package to the Landlord via Canada Post registered mail on January 10, 2019. The Tenant submitted a copy of the registered mail receipt in support. The Landlord acknowledged receipt of the Tenants Application and documentary evidence. The Landlord stated that she served the Tenant with her documentary evidence on January 21, 2019, via Canada Post registered mail. The Landlord provided a copy of the registered mail receipt in support. The Tenant confirmed receipt.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, I find the above documents were sufficiently served pursuant to Sections 88 and 89 of the *Act*.

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 Residential Tenancy Branch Rules

of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. If the Tenant is successful, is the Tenant entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

Both the Tenant and Landlord agreed to the following; the tenancy began on September 1, 2011. Currently, rent in the amount of \$1,529.30 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00, which the Landlord currently holds. Both parties submitted a copy of the tenancy agreement in support.

The Landlord testified that she served the Tenant with a One Month Notice dated December 31, 2018 with an effective vacancy date of February 28, 2019 by posting it to the Tenants door on January 2, 2019. The Tenant confirmed that she received the One Month Notice on January 2, 2019. The One Month Notice was issued on the basis that the Tenant is repeatedly late paying rent.

The Landlord testified that the Tenant was late paying rent to the Landlord when due for April, July, October, and December 2018. The Landlord submitted copies of email reminders sent to the Tenant in July and October 2018 indicating that rent was late. The

Landlord also submitted bank statements confirming when the late rent was transferred to the Landlord.

The Tenant confirmed that rent was not paid when due in April, July, October, and December 2018. The Tenant stated that she has never received a 10 Day Notice for any instances of late or unpaid rent, nor did she receive official warning advising that her tenancy would end should she continue paying rent late. The Tenant feels as though the One Month Notice is unwarranted as she has often paid rent early and that her late payments were typically paid in full the following business day.

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 Tenant has been repeatedly late paying rent.

According to the Residential Tenancy Branch Policy Guidelines #38 (the "Policy Guidelines"), three late payments are the minimum number sufficient to justify a notice under these provisions.

The parties agreed that rent has been paid late in April, July, October, and December 2018. The parties agreed, and I find that the rent is due on the first day of each month, and it has been paid late four times within the past year.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice dated December 31, 2018 without leave to reapply.

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 the One Month Notice to End Tenancy for Cause issued by the Landlord on December 31, 2018 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a Landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the Landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession, which will take effect two (2) days after service on the Tenant. This order should be served on the Tenant as soon as possible. If the tenant fails to comply with the order of possession it 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: March 4, 2019

Residential Tenancy Branch