



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

Tenant KM attended the hearing and confirmed she had authorization to attend the hearing on behalf of both tenants. The landlord attended the hearing on her own behalf. Each was each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant KM testified that she served the landlord with the notice of dispute resolution by placing it in the landlord's mailbox on January 19, 2019. The landlord confirmed receipt of the notice of dispute resolution. In accordance with sections 89 and 90 of the Act, I find that the landlord was deemed served with this package on January 22, 2019, three days after the tenants placed the documents in the landlord's mailbox,.

Tenant KM testified that she did not provide any documentary evidence to the landlord, and did not submit any to the Residential Tenancy Branch in support of her application.

Preliminary Issue – Landlord's Documents

The landlord provided a number of documents to the Residential Tenancy Branch, but testified that she did not serve these documents on the tenant. Rule of Procedure states:

3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.

It is each party's responsibility to know and comply with the Rules of Procedure. I find that, by failing to serve the tenants with her documentary evidence, the landlord did not comply with Rule 3.13. Accordingly, I did not allow the documents the landlord uploaded in advance of the hearing to be entered into evidence.

Neither party provided a copy of the Notice to the Residential Tenancy Branch. I stood the hearing down for five minutes to allow the landlord to upload this document during the hearing. I permitted this, as the tenants already had a copy of the Notice in her possession, and would not be disadvantaged by the landlord providing it to this Branch.

Issue to be Decided

Are the tenants entitled to a cancellation of the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

While the parties agree that there exists a written tenancy agreement, no tenancy agreement was entered into evidence. The parties agree that the tenancy was a fixed term tenancy starting January 1, 2017, but has now converted to a month to month tenancy. Monthly rent is \$1,660.00 and is due the first of each month. The tenants paid a security deposit of \$800.00 to the landlord. The landlord continues to retain this deposit.

On January 3, 2019, the landlord served the Notice on the tenant by registered mail (the Canada Post tracking number of which is written on the cover of this decision). The Notice had an effective date of February 28, 2019. The grounds to end the tenancy cited in the Notice were:

- the tenants are repeated late paying rent;
- the tenants have allowed an unreasonable number of occupants in the unit/site;

- the tenants or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- the tenants 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; and
- tenants have assigned or sublet the rental unit/site without landlord's written consent.

The Notice provided additional details of the causes leading to its issuance:

- the tenants received a bylaw infraction ticket in the amount of \$175.00, which the landlord paid and has not been reimbursed for;
- the tenants built an extra unit and converted the garage into a rental unit with the landlord's consent;
- BC Hydro disconnected the power, which the landlord believes may cause damage to the property due to cold weather
- The landlord suspects illegal activities, as she was contacted by BC Hydro regarding a possible power theft; and
- The tenants sublet a portion of the rental unit to her cousin and another individual without the landlord's consent.

The landlord testified that:

- The tenants were late with their rent every month in 2018, sometimes by as much as three weeks. She testified that December 2018's rent was not paid until December 23, 2018.
- She conducted a walkthrough of the rental property and observed that the tenants had built a room in the garage without her permission, that the door to it was locked, and that, as the tenants were not present during the walkthrough, she could not access it.
- The rental unit was crowded with "stuff" which made it difficult to access certain rooms.
- The basis for her belief that the tenants was subletting was that her plumber (who had previously done work at the rental unit) advised her he suspected as much.
- She received a bylaw infraction ticket on September 20, 2018 for "non-permitted storage" in the amount of \$175.00, and that she paid this amount and has yet to be reimbursed by the tenant.
- She was asked by BC Hydro to put the utilities in her name, which she complied with, and now owes \$920.00 in Hydro arrears.

Tenant KM testified that:

- She was only late paying rent four times in 2018 (she did not specify which months), and that the landlord always received full payment by the end of the month.
- She recently paid BC Hydro \$1,200.00 in connection with the arrears. She did not provide any documentation in support of this claim.
- She does not sublet any part of the rental property, and that, while she did build a room in the garage of the rental unit, she does not rent it out. Rather, she testified, she uses it for additional storage.
- The room she built is not connected to the structure of the rental property, but is freestanding.
- She has received both a 10 Day Notice to End Tenancy for Non-Payment of Rent and a Four Month Notice to End Tenancy for Renovations from the landlord, both of which were subsequently withdrawn prior to any hearing before the Residential Tenancy Branch.
- The reason many of her items are in boxes in the rental unit is because she had packed in preparation of moving after she was served with the (now withdrawn) Four Month Notice to End Tenancy. She denies that these boxes place the rental unit at serious risk.

Analysis

The Notice was served on the tenants on January 3, 2019 by registered mail. Pursuant to section 89 and 90, I find that the tenants are deemed served with Notice on January 8, 2019, five days after the landlord mailed to Notice.

Section 47(1)(b) of the Act states, “a landlord may end a tenancy by giving a notice to end tenancy if the tenant is repeatedly late paying rent.” This issue is examined in more detail by the Policy Guidelines.

Residential Tenancy Policy Guideline 38 states:

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. 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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

[...]

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[emphasis added]

Per section 26 of the Act, and Policy Guideline 38, the tenants are obligated to pay monthly rent on time. Section 47(1)(b) authorizes a landlord to end a tenancy if rent is repeatedly paid late. On Tenant KM’s own testimony I find that the tenants failed to comply with section 26 of the Act, as tenant K.M. acknowledged they were late paying monthly rent four times in 2018. It is not relevant that the tenants eventually paid the rent in full. The rent remains late.

What is relevant is the number of times that the tenants were late in paying rent, and whether the landlord took timely action following the most recent late payment.

The landlord testified that the tenants were late paying rent in December 2018 (she paid on December 23, 2018). Tenant KM did not deny this. The landlord did not say whether the tenants were late paying rent in January 2019. The Notice was served on the tenant on January 3, 2019 (less than two weeks after receiving the late payment of December 2018’s rent). I find that, in so doing, the landlord acted in a “timely manner” as required by the Policy Guideline 38.

Accordingly, I find that the Notice was validly issued on the basis that the tenants were repeated late in paying their rent, and I dismiss the tenants' application to cancel the Notice.

As such, it is unnecessary for me to consider the other reasons for termination of the tenancy listed on the Notice.

Section 55 of the Act states:

Order of possession for the landlord

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 form of the Notice complies with section 52 of the Act.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective seven days from the date the landlord serves this order on the tenants.

Conclusion

I dismiss the tenants' application to cancel the notice without leave to reapply.

I grant an order of possession to the landlord effective seven days after service of this order on the tenants. Should the tenants fail to comply with this order, 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 1, 2019

Residential Tenancy Branch