



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 an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 15, 2019. The matter was set for a conference call.

Both the Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

Issues to be Decided

- Should the Notice issued on January 15, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

Both parties agreed that the tenancy began on September 15, 2017, that rent in the amount of \$1,765.00 is to be paid by the fifteenth day of each month and that the Landlord is holding an \$850.00 security deposit of for this tenancy.

Both parties also agreed that the Landlord personally served the Notice to end tenancy to the Tenant on January 15, 2019. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenants must move out of the rental unit by February 15, 2019. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant filed to dispute the Notice on January 25, 2019.

The Landlord testified that the Tenant has been late in paying her rent five times in the last six months; for September, October, November, December 2018, and January 2019. The Landlord testified that the Tenant had paid the rent for February 2019, on time.

The Tenant testified that she did pay her rent late, but that they had been paying late for over a year and the Landlord had never issued a Notice to End the Tenancy due to late payment before, so they had felt that the Landlord was ok with the late payment.

The Landlord testified that he was never ok with the late payment of rent and that he had tried to work with them long enough and that he now wished to end the tenancy. The Landlord offered a move out date of March 31, 2019, to the Tenants, as long as the Tenants would pay a half a month rent for the period between March 16 to 31, 2018.

The Tenant testified that if she were unsuccessful in cancelling the notice, the Tenants would accept the Landlord's offer and pay a half a month's rent to have the tenancy end for March 31, 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice on January 15, 2019. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. I find the Tenants had until January 26, 2019, to file their application to dispute the Notice. The Tenants filed their application on January 25, 2019, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent

The Residential Tenancy *Act* provides 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.

In this case, I accept the sworn testimony of both parties that the Tenants have paid their rent late five times in the last six months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenants' application to cancel the Notice issued on January 15, 2019.

I find the Notice issued on January 15, 2019, is valid and enforceable.

Under section 55 of the *Act*, if the Tenants' application is dismissed and the Notice is valid. I am required to grant the landlord an order of possession to the rental unit. Therefore, I am granting the Landlord and order of possession effective not later than 1:00 p.m. on March 31, 2019.

Conclusion

The Tenants' Application to cancel the Notice, issued on January 15, 2019, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on March 31, 2019. 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: March 11, 2019

Residential Tenancy Branch