



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 25, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 17, 2019 (the "One Month Notice"), and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was accompanied by W.P., an agent. All in attendance provide affirmed testimony.

The Tenant testified the Application package was served on the Landlord by leaving a copy at the Landlord's office. The Landlord acknowledged receipt on January 27, 2019. I find the Application package was served on and received by the Landlord on that date.

The Landlord testified that a documentary evidence package was served on the Tenant by registered mail on February 12, 2019. A Canada Post registered mail receipt was submitted in support. The Tenant acknowledged receipt but was unable to confirm the date. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Landlord's documentary evidence package is deemed to have been received on February 17, 2019.

The parties were given a full 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 Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began in 2014. Currently, the Tenant pays subsidized rent in the amount of \$445.00 per month. The Tenant paid a security deposit in the amount of \$427.50, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the basis that Tenant is repeatedly late paying rent. The One Month Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on January 17, 2019. The Tenant's Application confirms receipt of the One Month Notice on that date.

The Landlord testified the Tenant has been repeatedly late paying rent during the tenancy. W.P. testified the late payments have been discussed with the Tenant on numerous occasions, and that the Landlord has not accepted that rent would be paid late. The Landlord no longer wishes to chase the Tenant for rent.

The acknowledges that rent has been repeatedly late. Submitted with his documentary evidence were copies of notices to end tenancy for unpaid rent or utilities dated October 2, November 2 and December 5, 2018, and January 3, 2019. In written statements included with the Application, the Tenant stated: "I know there are 21 notices I am not proud of this". However, the Tenant testified there are several "very good" reasons for paying late which include late payment of income to him, financial difficulty while waiting for Employment Insurance, and identity theft.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the One Month Notice was issued on the basis that the Tenant is repeatedly late paying rent.

Policy Guideline #38 provides assistance when determining whether or not late payments of rent are sufficient to end a tenancy. It 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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

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.

[Reproduced as written.]

After careful consideration of the evidence and submissions of both parties, I find there is insufficient evidence before me to cancel the One Month Notice. It was not disputed that there have been 4 recent late payments, and that there have been 21 late payments during the tenancy. Section 26 of the *Act* confirms rent must be paid when due. The reasons provided by the Tenant for the late payments are not a justification for repeatedly paying rent late as acknowledged by the Tenant. Accordingly, I find that the Application is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. I have examined the One Month Notice and find it complies with section 52 of the *Act*. Therefore, I grant the Landlord an order of possession, which will be effective on March 31, 2019, at 1:00 p.m.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord order of possession, which will be effective on March 31, 2019, at 1:00 p.m. The order of possession 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 12, 2019

Residential Tenancy Branch