



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC FF
 Tenant: CNC ERP RP FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on March 5, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated February 15, 2019 (the “One Month Notice”); and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on February 25, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a cancelling the One Month Notice;
- an order that the Landlord complete emergency repairs for health or safety reasons;
- an order that the Landlord make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The parties acknowledged service and receipt of the Application packages and documentary evidence to be relied upon. No issues were raised during the hearing with respect to service of the parties' respective application packages or of the evidence relied upon. The parties were in attendance and were prepared to proceed. I find the parties were sufficiently served with the above documents for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The Landlord and the Tenant were provided with the 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.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling the One Month Notice?
4. Is the Tenant entitled to an order that the Landlord complete emergency repairs?
5. Is the Tenant entitled to an order that the Landlord make repairs to the unit, site, or property?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on October 1, 2016. Rent in the amount of \$1,350.00 per month is due on the first day of each month. The Tenant did not pay a security deposit or a pet damage deposit.

The Landlord wishes to end the tenancy. Accordingly, the landlord issued the One Month Notice, which was served on the Tenant in person on February 15, 2019. During the hearing, the Tenant confirmed receipt of the One Month Notice on that date.

The Landlord testified the Tenant has been repeatedly late paying rent. In support, the Landlord submitted a ledger and receipts showing late payments in January, February, March, April, June, August, October and December 2018, and in January and February 2019. The Landlord testified the Tenant paid rent when due on March 1 and April 1, 2019.

In reply, the Tenant testified that he and the Landlord agreed in text messages on September 30, 2018, that the Landlord would attend the property on October 1, 2018. The Landlord did not. In response, the Landlord testified the parties live side-by-side and that he was available after work on October 1, 2019, if the Tenant wished to pay rent when due. The Tenant did not otherwise dispute the Landlord's evidence of late rent payments.

Analysis

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

Section 47 of the *Act* sets out the bases for ending a tenancy for cause. In this case, the One Month Notice was issued on the basis that the Tenant is repeatedly late paying rent. Further, Policy Guideline #38 provides assistance when determining these issues. 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 the Tenant has been repeatedly late paying rent. Specifically, the Tenant has paid rent late for 8 of 12 months in 2018, and for 2 of 4 months in 2019. Therefore, I grant the Landlord an order of possession, which will be effective on April 30, 2019, at 1:00 p.m. Having been successful, I also find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Landlord's Application.

As the tenancy is ending based on repeated late payments of rent, it has not been necessary for me to consider the Tenant's request for orders relating to repairs. Therefore, the Tenant's Application is dismissed, without leave to reapply.

Conclusion

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

The Landlord is granted an order of possession, which will be effective on April 30, 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.

The Landlord is granted a monetary order in the amount of \$100.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 12, 2019

Residential Tenancy Branch