



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAREN OSTROFF
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenant to cancel a Notice to End Tenancy.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on May 17, 2019 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's application and hearing package.

Issues to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2016 as a month to month tenancy. Rent is \$1,652.00 per month payable on the 1st of the month. The Tenant said he paid a security deposit of \$747.50 at the start of the tenancy.

The Landlord said that the Tenant paid his rent late for each of the following months in the last year: July, September, October, November and December 2018 and April, May and June 2019. The Landlord said the reasons for the late rent payments were the Tenant's cheques were either NSF or returned because the bank account was closed. The Landlord continued to say the rent was paid late and there is no unpaid rent at the present time. The Landlord said they took over management of the rental property in January 2019, the Tenant has been late with the rent 3 out of the 6 months that they have managed the property and this is not acceptable. The Landlord requested an Order of Possession if the Tenant's application is not successful.

The Tenant said that he was not late with the rent for December 2018, as there was a mix up with cash envelopes used to make the rent payment. The previous landlord accepted that he paid the rent on time. As well the Tenant said he believes the May 2019 rent was paid on May 1, 2019, but it may have cleared on May 3, 2019. The Tenant continued to say that he agrees that he was late with the rent for July, September, October and November 2018 and April and June 2019.

The Tenant asked the Landlord if the tenancy is ending could he stay in the unit until July 31, 2019 to let him have time to find a new rental unit.

The Landlord said the effective vacancy date on the 1 Month Notice to End Tenancy for Cause dated May 3, 2019 is June 30, 2019, but the Landlord will extend that date to July 15, 2019.

The Tenant said he understood but that is a very short time to find a new rental unit.

The Landlord requested an Order of Possession for July 15, 2019 if the Tenant's application is unsuccessful.

Analysis

Section 26 (1) of the Act says 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.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice to end tenancy under these provisions.

I find that the Tenant does not have the right to withhold a part or all of the rent when it is due. Further, I accept the Landlord's evidence that the Tenant has been late with the rent at least 6 times over the last 1 year. Given that the Tenant does not dispute the rent payments have been late on many occasions; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated May 3, 2019. Consequently I dismiss the Tenant's application without leave to reapply.

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 filing fee which has already been paid.

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on July 15, 2019.

Conclusion

The Tenant's application is dismissed without leave to reapply

An Order of Possession effective at 1:00 p.m. on July 15, 2019 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in 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: June 25, 2019

Residential Tenancy Branch