



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT OLC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

Preliminary Matter: Late Submission of Landlord' Evidence

The landlord testified that he submitted his evidence on June 13, 2019, five days before the hearing on June 18, 2019.

Residential Tenancy Branch Rules of Procedure, section 3.15 states that regarding service of the respondent's evidence:

3.15 Respondent's evidence provided in single package

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

In this matter, both the landlord has failed to submit his evidence in compliance with the *Residential Tenancy Branch Rules of Procedure*, section 3.15. I find that the admission of the landlord's evidence would prejudice the tenant and result in a breach of the principles of natural justice. Accordingly, all of the landlord's evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on January 15, 2017. The monthly rent was \$1,500.00, payable on the 15th day of each month. The parties later changed the payment due date to the first day of each month commencing on March 1, 2019. The tenant did not pay a security deposit or pet damage deposit.

The landlord testified that he acquired the property in an estate and that he needed to sell the property to complete the probate. The landlord testified that he wanted vacant

possession of the property so he could make improvements to the property and maximize the sale value.

The landlord testified that the tenant left for a prolonged vacation out of the country on February 21, 2019. The landlord testified that the tenant called him from the airport advising him that he was leaving and a friend of the tenant would send the monthly rent checks. The tenant testified that he told the landlord in January that he was going on the vacation. The landlord testified that he was upset that the tenant was leaving on vacation because the landlord wanted to access the property to make improvements.

The landlord testified that the March 2019 rent due on March 1, 2019 was late. The landlord testified that the tenant's friend called him on March 2, 2019 to make arrangements to pay the March 2019 rent and the parties met on March 3, 2019 to pay the March rent.

The tenant testified that his friend called the landlord on March 1, 2019 to make the rent payment but the landlord did not answer the phone. The tenant testified that his friend sent the landlord follow-up text messages on March 2, 2019 and March 3, 2019 before he finally got a hold of the landlord.

The tenant produced copies of the text messages dated March 2, 2019 and March 3, 2019 as evidence. The landlord admitted that the telephone number to which the texts were sent matched the landlord's cellphone. However, the landlord denied receiving the texts.

The landlord testified that the rent due on April 1, 2019 was not paid until April 14, 2019. In addition, the landlord testified that the tenant did not pay the utilities for the rental unit until he returned on April 19, 2019.

The tenant testified that the April 2019 rent was not paid on April 1, 2019 because the landlord was not available. The tenant testified that his friend was unable to reach the landlord until April 8, 2019 and, at that time, the landlord advised the tenant's friend that he was not in the country and they agreed to meet to deliver the rent cheque when the landlord returned.

The tenant testified that he did not include the utilities with the April 14, 2019 payment because the landlord did not tell the tenant's friend the amount owed for utilities. The landlord testified that he did not deliver a utility statement, or make a written demand to

pay the utilities, to the tenant's friend because the tenant's friend said that he wouldn't pay the utilities.

The landlord delivered the One Month Notice on April 30, 2019. The tenant acknowledged receipt of the notice. The One Month Notice stated that the reason for ending the tenancy was repeated late payment of rent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a. The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b. The tenant is repeatedly late paying rent;
- c. There are an unreasonable number of occupants in a rental unit;
- d. The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e. The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f. The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g. The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h. The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

- i. The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j. The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k. The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l. The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

In this matter, the landlord based his One Month Notice on a contention that the tenant was repeatedly late paying rent.

I find that the landlord has not produced sufficient evidence to establish that the tenant has been repeatedly late paying rent. I find that the tenant's friend did try to make arrangements to pay the rent on March 1, 2019 to March 3, 2019 by contacting the landlord by voice calls and text messages. Although the landlord denied receiving the text messages from the tenant's friend, I find that he did in fact receive those text messages based upon the testimony of the tenant's friend and the text messages submitted as evidence.

I find that any delay in paying the rent was the result of the landlord failing to timely co-operate with the tenant's agent. As such, I do not find that the tenant was responsible for the late payment of the March 2019 rent.

Similarly, I find that the landlord failed to make timely arrangements to process the April 2019 rent payment. I find that the tenant appropriately arranged for an agent, his friend, to make the rent payments while the tenant was out of the country and the delay in making the April 2019 payment was due to the unavailability of the landlord. The landlord has an obligation to co-operate with the payment of rent. I am not inclined to end a tenancy for late payment of rent in a situation such as this where I find that the landlord himself was not timely co-operating with the rent payment.

For these reasons, I find that the landlord has not provided sufficient evidence to establish that good cause exists to end this tenancy for late payment of rent. As such, I grant the tenant's application to cancel the One Month Notice. The One Month Notice is

cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

The tenant also made an application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62. However, the tenant did not specify which provision of the *Act*, regulations or terms of the tenancy agreement which the tenant claims that the landlord breached. Furthermore, the tenant did not provide any evidence or submissions in support of this claim. In the absence of any submissions or evidence, I dismiss the tenant's application herein for an order for the landlord to comply with the *Act*, regulation or tenancy agreement.

In addition, since the tenant has been generally successful this matter, I award the tenant \$100.00 for recovery of the filing fee which may be deducted from ONE future rent payment pursuant to section 72(2)(b) of the *Act*.

Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

I dismiss the tenant's application herein for an order for the landlord to comply with the *Act*, regulation or tenancy agreement.

I award the tenant \$100.00 for recovery of the filing fee which may be deducted from ONE future rent payment pursuant to section 72(2)(b) of the *Act*.

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 19, 2019

Residential Tenancy Branch