



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC DRI LRE OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 24, 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 July 16, 2019 (the "One Month Notice");
- an order relating to a disputed rent increase;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement.

The Tenant attended the hearing and was assisted by her mother, V.D. Two witnesses, B.A. and M.R., were in attendance for the Tenant but did not participate during the hearing. The Landlord attended the hearing on his own behalf. The Tenant, V.D., and the Landlord each provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the application package was served on the Landlord by registered mail on August 2, 2019. A Canada Post registered mail receipt with tracking information was submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Landlord on August 7, 2019.

The Tenant also testified she served a further documentary evidence package on the Landlord by registered mail on August 20, 2019. The Landlord denied receipt. Accordingly, as the evidence was served late, contrary to Rule of Procedure 3.14, and the Landlord testified he did not receive it, I find it is excluded from consideration.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenant in person on August 21, 2019. Although the Tenant denied receipt, the Landlord submitted a hand-written and signed statement confirming service in this

manner was witnessed by D.F. and E.P. I find it is more likely than not that the Tenant was served with and received the evidence package on August 21, 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.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the request for an order cancelling the One Month Notice, with leave to reapply for the remainder of the relief sought as appropriate.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

There is no written tenancy agreement between the parties. However, the parties confirmed the tenancy began in or about 2011. The parties agreed that until July 1, 2019, rent in the amount of \$1,150.00 per month is due on the first day of each month; effective July 1, 2019, rent increased to \$1,300.00 per month. That increase will likely be the subject of future dispute resolution proceedings. The Tenant paid a security deposit of \$500.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice, which was served on the Tenant on July 16, 2019. The Application confirms receipt of the One Month Notice on that date.

The One Month Notice was issued on the following bases:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

With respect to the Landlord's claim that the Tenant is repeatedly late paying rent, he testified that the Tenant paid rent late on December 2, 2018, and January 5, May 3, and July 5, 2019. In support, the Landlord submitted screen prints of text messages in which the Tenant advises that

rent would be paid late. The Landlord suggests that the Tenant's request at the end of each month is evidence that rent is due on the first day of each month.

In reply, the tenant advised that rent has been collected by the Landlord since November 1, 2018. The Landlord agreed. Further, the Tenant provided testimony that in each of the circumstances described the Landlord, the Landlord either did not pick it up on the first day of the month for his own reasons or agreed to the late payment for the convenience of both parties during holidays. The Landlord agreed he tries to give tenants "leniency" with respect to the payment of rent.

With respect to the Landlord's claim that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Landlord described a dispute with the owner of an adjoining property. The Landlord testified that the dispute has resulted in the attendance of police and animal control officers. The Landlord testified that attending the property to address complaints has been inconvenient and has had health impacts. The Landlord also testified that he receives unwanted communications from the Tenant. In addition, the Landlord testified that the Tenant burned a sofa on the property in October 2017, which resulted in Provincial Court of British Columbia judgment being issued in April 2018. A Certificate of Judgement, dated April 24, 2018, was submitted into evidence. confirmed the Tenant paid this debt in installments.

In reply, the Tenant testified she has had disagreements with the neighbour's son. Further, the Tenant acknowledged she had a fire but stated it was treated wood, not a sofa. She testified she obtains permits to burn.

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 described therein. In this case, the One Month Notice was issued on the bases identified above.

Section 47(1)(b) permits a landlord to take steps to end a tenancy for repeated late payments of rent. Policy Guideline #38 provides assistance when determining whether or not a tenant has been repeatedly late paying rent. 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.]

In this case, I find there is insufficient evidence before me to conclude the Tenant was repeatedly late paying rent, as contemplated under Policy Guideline #38. There is no written agreement to confirm rent is due on the first day of each month; since November 1, 2018, the Landlord has established a pattern of collecting rent from the Tenant; the Landlord acknowledge he gives tenants “leniency” with respect to the payment of rent, and; the Tenant’s testimony, which I accept, was that the late payments were made with the Landlord’s agreement.

Section 47(1)(d)(i) permits a landlord to take steps to end a tenancy where the tenant or a person permitted on the property by the tenant significantly interferes with or unreasonably disturbs another occupant or the landlord.

In this case, I find there is insufficient evidence before me that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord described a dispute with the owner of an adjacent property, not another occupant. Further, while I accept that driving across town to address complaints or receiving unwanted communications may be inconvenient to the Landlord, I find these disruptions are neither significant nor unreasonable as contemplated under the *Act*. In addition, in light of the time that has passed since the burning incident and the resulting judgment against the Landlord, and the testimony that the Landlord was reimbursed by the Tenant, I find this is not a basis for ending the tenancy.

After careful consideration of the evidence, I find there is insufficient evidence before me to end the tenancy for the reasons indicated on the One Month Notice. Therefore, I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with 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: August 30, 2019

Residential Tenancy Branch