



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REAL STAR MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself and was accompanied by her agent. The landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The background facts are generally undisputed. The tenancy at this unit started in August 2013. The current monthly rent is \$1,124.00 payable on the first of each month. On July 12, 2019, the landlord served the tenants with a notice to end tenancy for cause. The reason for the notice was that the tenant was repeatedly late paying rent.

The tenant agreed that she was late paying rent on several occasions but stated that the previous landlord was flexible and did not mind the late payments. The tenant agreed that she received multiple ten-day notices to end tenancy and that she was late paying rent six times in 2019, including the month of September 2019.

The landlord filed copies of ledger entries and stated that the tenant was late paying rent at least 40 times since the start of tenancy. The landlord stated that she had spoken with the tenant multiple times during the tenancy and that the tenant would agree to pay on time but never followed through.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies. Based on the testimony of both parties, I find that the tenant was late paying rent on at least three separate occasions.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Since January 01, 2019 to date, the tenant was late paying rent six times. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has proven the reason for the notice to end tenancy, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

The landlord agreed to extend the end date of tenancy up to October 31, 2019 Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant has not proven her case, she must bear the cost of filing this application. The landlord has proven her case and therefore is entitled to the recovery of the filing fee. The landlord may retain \$100.00 from the security deposit.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective at 1:00 pm on October 31, 2019.

The landlord may withhold \$100.00 from the security deposit.

The tenant's application is dismissed in its entirety.

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: September 24, 2019

Residential Tenancy Branch