



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASHURWIN HOLDINGS LTD/RPM
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the "Notice").

The tenant and the landlord's agent (hereafter, "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application or the other's evidence. The parties confirmed receiving the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

This written tenancy agreement shows that this tenancy began on July 1, 2018, monthly rent is \$1,400.00, due on the first day of each month, and the tenant paid a security deposit of \$700.00, at the beginning of the tenancy.

The landlord testified in support of serving the tenant the Notice, issued pursuant to section 47 of the Act. The Notice submitted into evidence by both parties shows that it was dated July 19, 2019, listing an effective end of tenancy date of August 31, 2019. The landlord submitted without dispute that the Notice was delivered to the tenant on that date, by attaching it to the tenant's door. The tenant confirmed receiving it on July 20, 2019 and filing his application in dispute of the Notice on July 26, 2019.

The cause listed on the Notice alleged the tenant is repeatedly late paying rent.

The landlord testified and provided documentary evidence that the tenant has made a late payment of rent eight times in the last ten months: September 4, 2018, December 3 and 13, 2018, February 5, March 4, April 15, May 13, June 12, and July 17, 2019, as shown on the Notice.

The landlord submitted that the tenant paid the rent late for August and September, 2019.

Tenant's relevant response-

The tenant submitted he was given permission to pay a day or two late in September and December 2018, but did not deny the late payments in 2019.

The tenant confirmed paying rent for September 2019.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenant disputed the 1 Month Notice in accordance with the timeline provided for under section 47 of the Act, the burden of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1

Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late paying rent, the cause listed on the Notice.

Section 26 of the Act requires a tenant to pay rent on the day that it is due, in this case, on the first day of each month.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

After considering the undisputed oral and written evidence submitted for this hearing, I find that the landlord has provided sufficient evidence to substantiate the cause listed on the Notice.

While the tenant claims he had permission to make late payments in 2018, he did not dispute that the rent payments for February, March, April, May, June, July, August and September, 2019 were paid late.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant is repeatedly late paying rent.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective September 30, 2019, at 1:00 p.m. as the parties confirmed that the tenant has paid the monthly rent for the month of September, 2019.

The order of possession is attached to the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective September 30, 2019.

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