



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHIVAM INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FFT OPC FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's application and materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

This periodic tenancy began in 2017. A security deposit of \$350.00 was paid at the start of the tenancy and is still held by the landlord. The current monthly rent is \$730.00 payable by the first of each month. A copy of the tenancy agreement was submitted into evidence.

The parties agree that rent was paid after the first for the months of November and December, 2018 and January, February, March, April, May and July, 2019. Copies of receipts were submitted into evidence. The tenant blamed the landlord for the late payments saying the landlord failed to attend the rental unit to collect rent by the first.

The landlord issued a 1 Month Notice dated July 19, 2019. The reason provided on the notice for the tenancy to end is that the tenant has been repeatedly late paying rent. Neither party gave evidence that the late payments were permitted or agreed upon.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy.

I accept the evidence of the parties that the written tenancy agreement provides that rent is due on the first of each month. I accept the evidence that the tenant failed to pay the rent on the first of the month in November and December 2018 and January, February, March, April, May and July, 2019. Neither party gave evidence that the late payments were permitted or agreed upon. Accordingly, I find that the tenant has been repeatedly late paying rent.

The tenant submits that the landlord is responsible for the late payments as they have failed to attend and collect the rent in a timely fashion. The tenant says that they have not been provided alternate means to pay rent. I do not find the tenant's submissions supported in the evidence. The landlord disputes the tenant's statements saying they have repeatedly requested payments be made by post dated cheques. I find that the onus is on the tenant to arrange for payment of the full amount of rent by the due date. I find the tenant's inability to make proper arrangements to not be an excuse for late payment of rent. I accept the landlord's evidence that

they have not consented to late payment of rent and that the rent is due on the first as set out in the written agreement.

I find that the landlord has shown on a balance that the tenants have been repeatedly late paying rent and there is cause to end this tenancy. I therefore dismiss the tenant's application and issue an order of possession to the landlord.

As the landlord was successful in their application the landlord may recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to reduce the security deposit for this tenancy by \$100.00 in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$350.00 to \$250.00.

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 27, 2019

Residential Tenancy Branch