



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, RP

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on July 5, 2019, in which the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on June 21, 2019 (the "Notice"), an Order that the Landlord make repairs to the rental unit, and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on September 3, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by her son, M.L., who also gave affirmed testimony and made submissions on her behalf. The Tenant had a witness, M.G., available to testify, however his testimony was not required.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant inverted her first and last name on the Application for Dispute Resolution; pursuant to section 63 I amend the Tenant's Application to correctly note her name.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for *emergency* repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's claim for repairs. Additionally, for reasons which will be further detailed, matters which relate to the continued tenancy, such as repairs to the rental unit, are no longer relevant; accordingly those claims are dismissed without leave to reapply.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord also provided written submissions. In those submissions the Landlord noted that this tenancy began in 2009. Five separate tenancy agreements have been entered into between the parties during that time, the most recent being March 31, 2017. Introduced in evidence was a copy of the March 31, 2017 tenancy agreement providing that rent was to be paid on the 1st of the month in the amount of \$1,460.00.

In those submissions, the Landlord also noted that the Tenant has been late paying rent 12 times during the tenancy, six times in the last 12 months and three times in 2019 including: Jan 2, 2019, May 2, 2019 and June 2, 2019. M.L. confirmed this information in his testimony before me.

The Landlord stated that the Tenant has paid rent on time in July and August and the Landlord provided her a receipt for use and occupancy only.

In written submissions the Tenant alleged that the Landlord was okay with her to pay rent late. In support she provided a copy of an email from 2014 in which the Landlord agreed to deposit the cheque on the 6th of the month. The Tenant submitted that she had a very good relationship with the Landlord and that only when it “soured” did the Landlord make an issue of her paying her rent late.

In response to the Landlord’s testimony and submissions the Tenant testified that she has paid her rent on time, and when it has been late, it has been a result of banking issues with her online app.

The Tenant confirmed that she was late paying rent in December of 2018. She stated that she had purchased a washing machine and the company had charged her twice and as such she did not have the money to pay the rent. The Tenant further confirmed that she was late paying rent January 2019, May 2019 and June 2019.

The Tenant stated that until May 31, 2019, she was not aware that the Landlord was expecting her to pay on the 1st of the month. The Tenant stated that since the Landlord made her aware of this she has now been paying her rent early. She stated that she paid the July, August and September rent 1-2 days before it was due.

The Tenant also claimed that the Landlord was very flexible with rent payments, as earlier she would have to wait 7-10 days for a cheque to clear and she was very happy when she switched to online banking.

In response, M.L. confirmed that it was always the Landlord’s position that rent was due on the 1st of the month. Further, the Landlord stated that she never agreed to the Tenant paying rent late. She confirmed that when the Tenant was late she followed up on her late payments, but did not inform the Tenant this was okay. She stated that every time she followed up with the Tenant the Tenant would say “okay, I will do it now”

or “okay sorry I have been busy”. The Landlord denied that the Tenant ever said it was due to a banking error.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. Section 47 of the *Act* allows a Landlord to end tenancy for cause. In the case before me, the Landlord issued the Notice pursuant to section 47(1)(b) which allows a Landlord to end a tenancy when a Tenant is “repeatedly late paying rent”.

Guidance can also be found in the *Residential Tenancy Branch Policy Guidelines*. *Guideline 38* deals with repeated late payment of rent and provides that three late payments are the minimum number sufficient to justify a an end to tenancy under section 47(1)(b).

I find, based on the testimony and evidence of the parties, and on a balance of probabilities that the Tenant has been repeatedly late paying rent as alleged in the Notice. The evidence before me confirms that the Tenant was late 12 times in total during the tenancy, and six times in the most recent year including September 2018, October 2018, December 2019, January 2019, May 2019 and June 2019.

The Landlord issued the Notice on June 21, 2019. As such, I find that she acted in a timely manner after the most recent late payment.

I further find that while the Landlord and Tenant may have had a friendly relationship in the past, and the Landlord may have been empathetic when the Tenant struggled to pay her rent on time, at no time did the Landlord waive her entitlement to receive rent on the 1st of the month when rent was due as set out in the tenancy agreement. This was evident in the communication between the parties wherein the Landlord was forced to follow up with the Tenant when rent was not paid on time.

During the hearing the Tenant stated that she has had difficulty paying her rent on the 1st due to issues with her online banking app on her phone. She stated that recently she has begun paying rent early to ensure such banking issues do not interfere with her paying on time. She did not provide any corroborating documentary evidence to support her testimony that it was her banking app which caused her late payment. In any event, it is the Tenant’s responsibility to pay rent on time, and it was incumbent on

her to ensure the payment was received. In this respect I prefer the testimony of the Landlord that the Tenant's failure to pay rent was not due to circumstances beyond the Tenant's control.

I therefore find the Landlord has met the burden of proving the reasons for ending this tenancy. The tenancy shall end in accordance with the Notice.

The parties confirmed that the Tenant has paid rent until the end of September, although a receipt was provided for use and occupancy only thereby not reinstating the tenancy. As there is no urgency to ending this tenancy, I find that the Landlord shall regain possession of the rental unit at the end of the month.

I find that the Notice complies with section 52 of the *Act*; as such, **I grant the Landlord an Order of Possession effective September 30, 2019.** This Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court.

Conclusion

The Tenant's Application to cancel the Notice is dismissed. The Tenant's request for recovery of the filing fee is also dismissed. As the tenancy is ending, the Tenant's request for an Order that the Landlord make repairs to the rental unit is similarly dismissed without leave to reapply.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on 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 4, 2019

Residential Tenancy Branch