



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEICOR REALTY MANAGEMENT SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Name Correction

H.T. testified that she was a representative of the landlord but the tenant named H.T. as the landlord. I find that the landlord is the entity stated on the tenancy agreement, not H.T., and I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Background and Evidence

The parties both agreed that the tenancy started in 2013 and the monthly rent was \$995.00, payable on the first day of each month. The current rent is \$1,129.00 per month. The tenant paid a security deposit of \$497.50 and a pet damage deposit of \$497.50. The landlord still holds both deposits.

The landlord issued a One Month Notice on August 15, 2019 stating that the tenant been repeatedly late paying rent. The landlord claimed that tenant paid the rent late in February 2019, July 2019 and August 2019. Specifically, the landlord testified that the rent for February 2019 was paid on February 5, 2019; the rent for July 2019 was paid on July 9, 2019 and the rent for August 2019 was paid on August 9, 2019.

The tenant acknowledged that the rent was paid late on February 2019, July 2019 and August 2019. However, the tenant testified that she had explanations for the late payments.

The tenant explained that the rent was paid late in February 2019 because the rent became due on a weekend and she was away for the weekend. She testified that she paid the rent on February 5, 2019 when she returned.

The tenant paid the rent late in July 2019 because her rent cheque was returned as nonsufficient funds. The tenant testified that this happened because her roommate did not pay her share of the rent. The tenant testified that the roommate no longer lives there.

The tenant testified that the August 2019 rent was paid late because her rent money was stolen. The tenant borrowed money and paid the rent on August 9, 2019.

Analysis

Section 47(1)(b) states that a landlord may issue a notice to end tenancy if a tenant is repeatedly late paying rent. *Residential Tenancy Branch Policy Guideline No. 38* discusses the termination of a tenancy for repeatedly late payment of rent:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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.

Based upon the agreed testimony of both parties, I find that the tenant was late paying the rent in February 2019, July 2019 and August 2019. I find that the satisfactory proof of three late payment within one year is a sufficient basis for a notice to end tenancy pursuant to *Residential Tenancy Branch Policy Guideline No. 38*. Further, although the tenant provided explanations for her late payments, the tenant did not provide an evidence corroborating her explanations. As such, I find that the tenant has not provided sufficient evidence to establish the existence of exceptional circumstances that may excuse the late payments. Accordingly, I dismiss the tenant’s application to cancel the One Month Notice.

Section 55 of the *Act* states that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: October 28, 2019

Residential Tenancy Branch