



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 23, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant did not submit any documentary evidence. The Landlord confirmed receipt of the Tenants Notice of Hearing and application package and did not take issue with the service of this package.

The Landlord stated that he served the Tenant his evidence by sending it via email on December 15, 2019. The Tenant stated he got an email from the Landlord but did not get all of the images and documents the Landlord tried to send. During the hearing I explained that email is not one of the listed and endorsed methods of service under the Act. During the hearing there was some confusion with respect to what was included in the email, and which pictures and documents were provided to the Tenant, as the Tenant stated he did not have all of the documentation that was submitted to the branch. Ultimately, I find the Landlord has failed to sufficiently serve the Tenant with his documentary evidence in a verifiable manner. I do not find an email is sufficient to demonstrate service in accordance with the Rules of Procedure and the Act. I find the

Landlord's documentary evidence is not admissible and will not be considered in making my determinations.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy.

The parties both agree that monthly rent is set at \$3,800.00 and is due on the first of the month.

The Landlord stated that one of the reasons he issued the Notice is because the Tenant is repeatedly late paying rent. The Landlord testified that he served the Notice, on October 30, 2019, and the Tenant acknowledged receipt of the Notice on that day.

The Landlord stated that Tenant has paid rent late numerous times in the past year. The Landlord elaborated and explained that the Tenant has paid rent late 7 or 8 times in the last year, but the Landlord did not provide a schedule to explain which months were late. The Landlord stated that the Tenant often pays around a week late, and at times, he is nearly a month behind. The Landlord stated that the Tenant continually makes partial, and late payments each month, despite being told it is not acceptable.

The Tenant acknowledged paying rent late but stated that he has not paid rent late 7 or 8 times, as alleged. However, the Tenant specifically stated that within the last year, he has paid rent late "several times". The Tenant acknowledged that he is sometimes 1

day late, due to banks not being open on the weekend, and he also acknowledged being late by 2 days, and up to 7 days. The Tenant did not have the dates of his late rent payments, but stated that the above late payments were all within the last year.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The first issue the Landlord identified on this Notice was:

Tenant is repeatedly late paying rent.

Based on the undisputed testimony provided at the hearing, it is clear that rent is due on the first of the month. I note the Landlord stated the Tenant has been late 7 or 8 times this past year alone. The Tenant denied that it was this often, but I note he specifically acknowledged that he was aware rent was due on the first of the month, yet he was late "several times" within the last year. I note the Tenant specifically referred to paying rent late 1, 2, and 7 days over the course of the last year. Although there was no clear schedule provided into evidence showing what months rent was late, and by how much time, it is clear that the Tenant, by his own admission, agreed he has been late paying rent multiple times. I turn to the following:

Residential Tenancy Policy Guideline #38 – Repeated 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.

I find there is sufficient evidence and testimony to show that the Tenant has been late paying rent at least 3 times in the past year. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. Since the Tenant has paid rent until the end of December 2019, I find the Landlord is entitled to an order of possession effective December 31, 2019, after service on the Tenant.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **December 31, 2019**, 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: December 23, 2019

Residential Tenancy Branch