



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applied pursuant to section 47(4) of the *Residential Tenancy Act* (the Act) to:

- dispute the landlord's one month notice to end tenancy issued for cause pursuant to section 47(1)(b) of the Act.

The landlord's representative AM and tenant RS attended the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The parties raised the issue of when and if all of the tenant's evidence was received by the landlord. The tenant stated that he provided some late evidence to substantiate medical issues. There were no concerns raised about the service of the landlord's notice to end tenancy and the landlord's evidence to support the notice. I find the parties have been sufficiently notified of all particulars of the dispute application and are fully prepared to resolve the dispute today.

Issue to be Decided

- Is the landlord entitled to end the tenancy because the tenant is repeatedly late paying rent?

Background and Evidence

The tenancy agreement was entered into evidence. The parties agreed this periodic tenancy began on January 1, 2019, the rent is \$1,700.00 per month due on the first of the month and the landlord continues to hold the tenant's \$850.00 security deposit in trust. The landlord testified rent for March 2020 has been paid with the exception of \$14.20 outstanding balance for a bank fee.

On January 27, 2020 the landlord posted on the tenant's door a one-month notice to end tenancy because the tenant is repeatedly late paying rent ("the notice"). The notice

is in evidence. The effective date of the notice is February 29, 2020. The following details are provided on the notice: November 2019 rent paid on November 14, 2019; December 2019 rent paid on December 5, 2019; January 2020 rent paid on January 24, 2020.

The landlord testified and presented a ledger to substantiate the tenant was late paying rent for May 2019, August 2019, November 2019, December 2019 and January 2020. In addition to the notice that is the subject of this dispute, the landlord entered into evidence three (3) ten-day notices to end the tenancy for unpaid rent which were issued to the tenant on August 27, 2019, December 11, 2019 and January 16, 2020,

On February 6, 2020 the tenant filed to dispute the notice. The tenant concurred with the landlord's testimony and documentary evidence about when the notice was posted to his door and the number of times he paid the rent after the first of the month. He was facing difficult circumstances and testified was able to nullify the landlord's 10-day notices to end the tenancy for unpaid rent because he did pay the rent by the landlord's deadline. He believed that because his late payments were enough to nullify the landlord's 10-day notices for unpaid rent, the tenancy would continue and late payments of rent wouldn't cause him to be evicted. He stated that because the landlord accepted these late payments and did not warn him that he may be evicted for late payments, the tenancy should continue. The tenant stated he would have taken additional steps to pay the rent on time had he known he would be evicted for repeatedly paying the rent late. He also stated that he believes it's a 'grey area' as to the frequency and number of late payments that legally constitute sufficient cause for the landlord to end the tenancy.

The tenant provided reasons of why he will not pay rent late again. The landlord declined to withdraw the notice, referenced section 11 of the tenancy agreement, which states the tenant may be evicted for late payment of rent, and stated the landlord wants to enforce the notice and end the tenancy.

Analysis

It is a material term of the tenancy agreement that rent is paid in full when it is due. This is provided for in Section 26 of the Act:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant argued the landlord implied it was waiving its right to end the tenancy for repeated late payments of rent because the landlord established a pattern of accepting rent late and failed to warn him that being repeatedly late would result in the end of the tenancy.

There is nothing in the Act compelling a landlord to warn a tenant that repeated late payments of rent are a lawful cause to end the tenancy. The landlord accepted the tenant's late payments because rent was lawfully owed under the tenancy agreement. The landlord served notices to end the tenancy when payment was late, thus did not imply that rent was no longer due on the first of the month. I conclude the tenant has not proven that the landlord implicitly waived its right to end the tenancy for the cause of repeated late payments of rent.

The tenant was late paying rent for the 5th (May), 8th (August), 11th (November), 12th (December) and 13th (January) month of the tenancy. The rate and number of times the tenant was late paying rent is sufficient for me to find the tenant has been repeatedly late paying rent according to policy guideline #38:

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.

I have reviewed the notice and find its form and content complies with section 52 of the Act. I find the landlord has substantiated the cause to end the tenancy effective February 29, 2020 pursuant to section 47(1)(b) of the Act and policy guideline #38.

Conclusion

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

Pursuant to section 55 of the Act, I issue an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone 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.

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: March 16, 2020

Residential Tenancy Branch