



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YWL Global investment. Consulting &
Education 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 the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant attended the hearing and was assisted by an articling student ("**RR**"). The landlord was represented at the hearing by an agent ("**PY**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail on January 13 and February 21, 2020 respectively. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The PY confirmed receipt of the notice of dispute resolution packages via registered mail. I find that the landlord was served with these packages in accordance with the Act.

The landlord did not submit any documentary evidence in support of its response to the tenant's application. PY stated that he did not know how to do this.

Issues to be Decided

Is the tenant entitled to have the Notice cancelled?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant moved into the rental unit in February 2000. She entered into an oral tenancy agreement with the then-owner (the "Prior Owner") of the rental unit. The tenant testified that monthly rent was \$605 and that she paid the Prior Owner a security deposit of \$302.50. She testified that the tenancy agreement did not specify what date during the month rent was due.

The parties agree that in 2011, the rental unit was sold to the landlord. The tenant testified that she did not sign a new tenancy agreement, and the oral tenancy agreement continued. PY disagreed and testified that the tenant signed a new tenancy agreement with the landlord, which stated that rent was due on the first of the month. No such tenancy agreement was entered into evidence. PY also testified that the security deposit paid to the Prior Owner was transferred to the landlord when the landlord purchased the rental unit, but testified that it was \$250, not \$302.50.

On December 30, 2019, the landlord served the Notice on the tenant. The tenant disputed the Notice on January 7, 2020. The Notice listed the reason for ending the tenancy as "tenant is repeatedly late paying rent." The landlord wrote on the Notice:

Tenant is repeatedly late paying rent more than 3 times. Rent is due on 1st day of every month.

According to our record from last 4 months, the tenant was paid on date of (December 16th 2019), (November 7th 2019), (October 6th 2019), (September 9th 2019)

PY testified that the tenant, over the last four years, was frequently late in paying her rent. He testified that he gave her verbal warnings about paying rent on time but admitted that he gave her nothing in writing.

The tenant does not dispute the tenant's testimony that she has paid rent after the first of the month many times. The tenant submitted a list of her monthly rent payments showing that, since January 2014 she has paid rent after the first of the month over 60 times.

The tenant testified that in February 2014, she and the landlord entered into a verbal agreement whereby the tenant would be permitted to pay monthly rent anytime during the month (the "**2014 Agreement**"). She testified that this arrangement was struck because the landlord was waiting two or three months before cashing her rent cheques

(so the timing of the rent payment, she says, was not important to it) and that her income is erratic (she works on a commission basis).

PY did not deny that in 2014 he, on behalf of the landlord, agreed that the tenant could pay her rent “late”. Rather, he testified that he only agreed he could do so for a few months. He did not explain why, if this were the case, the landlord took no steps to enforce its right to collect monthly rent from the tenant on the first of the month.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the burden to prove that the basis for issuing the Notice is valid.

The tenant does not dispute the timing of her rent payments. She admits that she often paid rent after the first of the month. However, she disputes that making such payments should be considered “late”, as the original tenancy agreement, reaffirmed by the 2014 Agreement, permitted her to pay monthly rent at any time during the month it was due.

The landlord bears the onus to show that rent is due on the first of the month. Based on the evidence before me, I find that it has not discharged this onus. The parties’ oral evidence is in conflict, and the only documentary evidence presented show a long-standing pattern of payment of rent by the tenant after the first of the month. Given that the landlord has taken not taken any steps to enforce its rights or to end the tenancy for late payment of rent before this application, I find that it is not unreasonable to conclude that rent was not, as alleged by the landlord, due on the first of the month.

However, in the event I am incorrect, and rent is due on the first of each month, I would still find that the Notice is invalid.

If rent were due on the first, I find that through the landlord's practice of *consistently* accepting rent after it was due (that is, after the first of each month) and failing to issue any form of notice to end tenancy amounts to the landlord's waiver of its right to end the tenancy for late payment of rent. It is clear that such conduct of the tenant was repeatedly tolerated by the landlord.

I find that such conduct ultimately became unacceptable for the landlord. However, given that the landlord's prior conduct amounted to a waiver, the landlord is required to provide reasonable notice to the tenant of her intention to reassert her right to be paid rent on time, as set out in *Hinkson Holdings Ltd. v Silver Sea Developments Limited Partnership*, 2007 BCSC 118, wherein the court states:

[51] The law with respect to waiver is usefully summarized in *Saskatchewan River Bungalows Ltd v. Maritime Life Assurance Co.*, [1994 CanLII 100 \(SCC\)](#), [1994] 2 S.C.R. 490 at paras. 18-20 and 27. The two essential elements of waiver are full knowledge of one's contractual rights arising from a breach by the opposing party, and an unequivocal and conscious intention to abandon them. The principle underlying waiver is that a party should not be allowed to reverse a choice when it would be unfair to the other party to do so. Waiver can be retracted on reasonable notice being given to the party in whose favour it operates. The notice requirement protects reliance by that party on the waiver.

[...]

[66] [...] Waiver may be established by conduct, in particular, acceptance of a payment: [citation omitted].

Applied to this case, I find that the landlord established a pattern of accepting late rent payments from the tenant and the tenant relied on this pattern to continue to make late payments. The landlord may not now try to strictly enforce their right to being paid on time without first giving notice to the tenant that they wish to strictly enforce the payment of rent on time.

As such, I would order that the Notice be cancelled.

Conclusion

Pursuant to section 47 of the Act, I order that the Notice is cancelled. The tenancy shall continue.

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 9, 2020

Residential Tenancy Branch