



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coquitlam Kinsmen Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 2, 2020 ("One Month Notice").

The Tenant and three agents for the Landlord, D.B., S.D., and T.W. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent, D.B, for the Landlord's name in this matter, as the Agent introduced the other Agents as "Board Members" of the Landlord organization. The Agent said that she and the Board Members represent the Landlord; therefore, I have amended the respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Section 55 of the Act requires that when a tenant applies to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession. This is the case if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the Act.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2019, with a monthly rent of \$729.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$400.0, and no pet damage deposit.

The Agents said in the hearing, which was supported by their documentary evidence, that they served a One Month Notice on the Tenant on January 2, 2020, by posting it on the door of the rental unit with an effective vacancy date of February 29, 2020. The grounds checked off for issuing the One Month Notice were because the Tenant is repeatedly late paying rent.

The Agents directed my attention to a document they had submitted which provides a record of the Tenant's rent payments. This document contains the following chart:

Tenancy Month	Type of Payment	Date Received	[Amount Paid]
May 2019	Cheque		
June 2019	Cheque	Post-dated	NSF
June 2019	Cash	12 th	\$730.00
July 201	Cheque	Post dated	\$729.00

August 2019	Cheque	Post dated	\$729.00
September 2019	Cheque	Post dated	NSF \$729.00
September 2019	Cash	16 th	\$729.00
October 2019	Cheque	Post dated	NSF
October 2019	Cheque		NSF
October 2019	Cash	28 th	\$729.00
November 2019	Cash	October 31	\$624.00
November 2019	Cash	October 31	\$105.00
December 2019	Cash	November 25	\$455.00
December 2019	Cash	December 9	\$274.00
January 2020	Cash	January 6	\$730.00

In the hearing, the Tenant said: “I’m not denying that my rent was paid late.” The Tenant said there was a bank error that resulted in the first NSF of a rent cheque payment. The Tenant said that in June 2019, she was in a difficult situation, having moved from a “second stage transition house”, because she had been assaulted. The Tenant said that she moved to the rental unit in May 2019, she was working part time “...and didn’t have everything quite figured out yet. As soon as [the Agent] called me, I paid her the full amount on the 12th in cash.”

The Agents said that the Tenant gave them a year’s worth of post-dated cheques for the monthly rent; however, they said that they returned the Tenant’s post-dated cheques to her, after four cheques were returned by the Tenant’s bank for having had insufficient funds to honour the rent payments from May through October 2019. At that point, the Agents advised the Tenant that she would have to pay her rent in cash or by money order.

The Tenant said:

I usually have enough cash. I don’t get child support and my child tax has been garnished. I make \$2,000.00 a month for everything. There are months that it is very much a struggle, so some months are harder for me than others. I do try to communicate with [D.B.] when I’m waiting for money from my ex. He stopped paying me. Having to pay my rent is a struggle.

The Tenant said that she has had trouble getting the rent money to the Landlord, given conflicting schedules of when the Tenant is home and when the rental office is open. She said: “As of January, I got the key to the building to leave my cash or money order

in her mail box.” The Tenant also said that the Landlord now accepts monthly rent payments via e-transfer. She said: “I could actually pay them without having to track them down or pay \$15.00 extra for a money order. As of February, my rent was on time and paid in full. I also paid rent in full for March 2020, which was paid on February 28, 2020.

The Tenant mentioned that she has a lot of expenses in her budget, including considerable costs for her son to play hockey.

The Agent, S.D., said in the hearing: “When we interview our tenants, we make it clear what portion goes to rent, and if they don’t pay their rent, they are subject to eviction.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(b) the tenant is repeatedly late paying rent;

....

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

In this case, the Parties agreed that the Tenant was late paying rent in June, September, October and December 2019, as well as January 2020. Policy Guideline #38 states:

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 have considered the Tenant's testimony that one late payment was caused by a bank error, and that she had some difficulty getting her cash or money orders to the Landlord on time, due to scheduling difficulties. However, other tenants face the same challenges as the Tenant in terms of getting the funds to the Landlord; I find it more likely than not that if the Tenant had been able to pay her rent on time, that she would or could have found a way to do so.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I uphold the One Month Notice and dismiss the Tenant's Application to cancel it.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice. I dismiss the Tenant's Application, as I find that the Landlord provided sufficient evidence to meet their burden of proof in this matter. I find that the One Month Notice is valid and effective as of February 29, 2020.

I grant the Landlord an Order of Possession effective March 31, 2020. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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 10, 2020

Residential Tenancy Branch