



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 11, 2020, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 30, 2020 (the "One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires 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 that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated January 30, 2020 pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 30, 2013. The Tenant currently pays rent in the amount of \$950.00 to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00 which the Landlord continues to hold.

The Landlord testified that the Tenant has been repeatedly late paying rent in October, November, December 2019, as well as in January, and February 2020. The Landlord stated that he is constantly needing to check in with the Tenant to ask about the rent payment and that he cannot continue in this fashion. The Landlord stated that he subsequently served the Tenant with a One Month Notice dated January 30, 2020 with an effective vacancy date of March 1, 2020 by posting it to the Tenant's door on January 31, 2020. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

The Tenant confirmed that she received the One Month Notice on February 1, 2020 posted to her door. The Tenant agreed that the rent has been paid late on the above-mentioned months. The Tenant stated that she has experienced some recent issues with her health which impacted her employment and ability to pay rent on time. The Tenant stated that she has since recovered and is able to pay her rent on time moving forward. As such, the Tenant is seeking leniency in having the One Month Notice cancelled. If successful, the Tenant is seeking the return of the filing fee.

Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

In this case, parties agreed the Tenant is required to pay rent in the amount of \$950.00 to the Landlord on the first day of each month. I accept that the parties agreed that the Tenant has paid rent late in October, November, December 2019, as well as in January, and February 2020.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on January 30, 2020 by posting it to the Tenant's door on January 31, 2020. The Tenant confirmed receipt of the One Month Notice on February 1, 2020. Under Section 53 of the *Act*, incorrect effective dates automatically change to comply with the *Act*. As such, the One Month Notice has a corrected effective vacancy date of March 31, 2020. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I find that the Landlord has submitted sufficient evidence to demonstrate that the Tenant has paid rent late on more than three occasions. I further accept that the Tenant confirmed that rent was paid late in the above-mentioned months. As such, I dismiss the Tenant's Application to cancel the One Month Notice dated January 30, 2020 without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of

possession, which will be effective at 1:00 P.M. on April 30, 2020 after service on the Tenant.

As the Tenant was not successful with her Application, I find that she is not entitled to the return of the filing fee paid to make the Application.

Conclusion

The Tenant's Application is dismissed as I have found they have been repeatedly late paying rent. As such, I grant the Landlord an Order of Possession to be effective at 1:00 P.M. on April 30, 2020 after the Order is served to the Tenant. Should the Tenant 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: April 23, 2020

Residential Tenancy Branch