



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CML PROPERTIES and CML PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and monetary compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and procedural matters

I had not been provided a copy of the 1 Month Notice to End Tenancy for Cause prior to the commencement of the hearing. Where a tenant is disputing a notice to end tenancy, the Rules of Procedure require the tenant provide a copy of the subject notice to end tenancy. The tenant was of the belief he had provided it to the Service BC office when he filed his Application for Dispute Resolution; however, the tenant also appeared rather confused about the dispute filing process. The landlord confirmed that the package served by the tenant did not include a copy of the subject notice to end tenancy. Both parties indicated they wanted resolution to this matter and wanted to proceed to be heard. The landlord stated he had a copy of the subject notice to end tenancy before him that he could provide to me electronically during the hearing. I ordered him to do so.

I confirmed the tenant received the landlord's evidence package, namely images of text message exchanges, totalling 26 pages. During the hearing, I noted that I was not in receipt of pages 8 through 20 and I ordered the landlord to resubmit those during the hearing, which he did.

In filing his Application for Dispute Resolution, the tenant indicated he sought compensation for moving costs if he were evicted. I dismissed this request as a tenant is not entitled to compensation under the Act where their tenancy is ended for cause.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenancy started on August 1, 2018 on a month to month basis. The tenant is required to pay rent of \$800.00 on the first day of every month.

The landlord submitted the tenant has paid rent late on several occasions including the months of: April 2019, September 2019, November 2019, December 2019, February 2020 and March 2020.

The landlord's agent personally served the tenant with a 1 Month Notice to End Tenancy for Cause on March 16, 2020. The reason for ending the tenancy, as stated on the 1 Month Notice, is "Tenant is repeatedly late paying rent." In the details of cause section of the 1 Month Notice the landlord wrote: "the tenant has received in the last 7 months 4 10 Day Notices for unpaid rent. Sept 2019, Nov 2019, Dec 2019 and March 2020. See attached." The landlord attached copies of the four 10 Day Notice referred to in the details of cause to the 1 Month Notice.

The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

Since the landlord has specified the months of September 2019, November 2019, December 2019 and March 2020 on the 1 Month Notice, I asked the landlord to describe the dates the tenant paid rent for these months. The landlord provided the following testimony upon reviewing his receipt book:

- Rent for September 2019 was paid on September 4, 2019, in the amount of \$800.00
- Rent for November 2019 was paid in two installments: \$675.00 on November 1, 2019 and \$125.00 on November 3, 2019
- Rent for December 2019 was paid by installments of \$730.00 on December 1, 2019 and \$70.00 on December 10, 2019
- Rent for March 2020 was paid on March 3, 2020 by one payment of \$800.00.

The tenant conceded that the dates and amounts described by the landlord above were likely accurate.

The tenant seeks cancellation of the 1 Month Notice on the basis the landlord's agent, referred to by initials JC, was accepting of his late payments and did not take issue with the late payments until more recently when the parties were in dispute over a different matter.

JC responded by stated he was not agreeable to the tenant paying rent late as evidenced by his issuance of 10 Day Notices to End Tenancy for Unpaid Rent nearly every time the tenant was late and JC communicated to the tenant orally and by text message that he had to pay rent by the first of the month. JC explained he took the money offered by the tenant as it is his job to collect rent from tenants on behalf of the landlord.

The tenant submitted that he went to another agent for the landlord, referred to by initials NH, and the tenant claimed that NH informed him that he did not have to move out if he made sure he paid his rent on time. The tenant claimed this conversation took place a couple of months ago, in March 2020, and that he has paid rent on time for April 2020 and May 2020.

JC responded that the conversation the tenant had with NH took place before March 1, 2020 so when the tenant failed to pay the rent on March 1, 2020 the landlord issued the 1 Month Notice. JC pointed to a text message sent by JC to the tenant on March 1, 2020 whereby JC refers to the conversation with NH.

JC stated that NH holds a superior position than he does and that JC expected NH to be at the hearing but NH had a scheduling conflict. I requested JC contact NH and request his attendance. NH called into the hearing and was subject to examination.

NH testified that he had several conversations with the tenant about his late payment of rent but he could not recall exactly when those conversations took place or his exact words. The tenant described a telephone conversation with NH whereby the tenant was crying that he was getting evicted and NH said he did not have to move out if he paid rent on the first. NH vaguely recalled a conversation with the tenant in January 2020 and in April 2020 whereby he encouraged or told the tenant that he needed to pay rent on the first.

The tenant indicated that since the last conversation with NH in March 2020 he has paid rent on time and he will continue to do so. The tenant indicated to me that he knows understands that it is his responsibility to ensure his full rent payment is presented to the landlord by the first of every month from here on out, without exception.

Analysis

Under section 47 of the Act, a tenancy may be ended where a tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline 38 provides that three late payments are generally sufficient to consider a tenant repeatedly late in paying rent.

In this case, it is undisputed that the tenant has been repeatedly late paying rent. Rather, the issue is whether the landlord is estopped from issuing or enforcing the 1 Month Notice that is before me.

Section 91 of the Act provides that the common law applies to landlords and tenants. I have reproduced section 91 below:

91 Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Under common law, estoppel is a principle that prevents or “estops” a party from going back on his or her word or asserting a right that contradicts what they had previously said or agreed. This principle is intended to prevent a person from being wronged by a person’s inconsistencies.

I heard testimony from all the parties that the tenant and NH had a conversation whereby NH told the tenant to pay his rent by the first of the month when the tenant approached him about receiving an eviction notice. The tenant appeared to have a rather clear memory of what was said in those conversations and took NH’s words to mean if he paid rent on time from that point forward, he would not be evicted. The issue then becomes, when did NH last say those words?

The last time the tenant was late paying his rent was rent for March 2020, which was paid on March 3, 2020. If NH made statements to the tenant that he would not be evicted if he paid rent on time on or after March 3, 2020 then I find the landlord is estopped from issuance of the 1 Month Notice.

The timing of NH's statements to the tenant were not clear with the tenant saying "a couple of months ago" and in March 2020; JC saying it was before March 1, 2020 and NH stating it may have been April 2020.

It did not appear to me that the landlord had documented those conversations with the tenant or was unprepared for the hearing. In any event, I find I am unclear as to when NH made those statements to the tenant and given the uncertainty, I find there is a reasonable likelihood it was after the March 2020 rent payment was already late and I find the landlord has not satisfied me the tenancy should end and the 1 Month Notice upheld. Therefore, I cancel the 1 Month Notice issued on March 16, 2020 and the tenancy continues at this time.

Despite cancelling the 1 Month Notice, I find it appropriate to impress upon the tenant the importance of meeting his obligation to pay rent on time from this point forward. As provided under section 62(3) of the Act, I have authority to make any order necessary to give effect to certain rights and obligations under the Act and to order a party to comply with the Act, regulations or tenancy agreement. Section 62(3) provides as follows:

3)The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies

In hearing from both parties, it is clear to me that the tenant has been late paying rent on numerous occasions and the landlord seeks the tenant's compliance in paying his rent on time and the landlord's tolerance of accepting late payment from the tenant has ended. I am of the view the tenant needs to take his obligation to pay rent on time more seriously by recognizing that his financial difficulties are his issues for which the landlord is not responsible and to stop creating burden for the landlord. Therefore, I issue the following order to the tenant:

I ORDER the TENANT to: ensure the full amount of rent is paid on or before the first day of every month from this date forward. For added certainty: This order applies regardless of the tenant's financial situation, whether the first day of the month falls on a holiday or other day the bank is closed, or any other circumstance.

I FURTHER AUTHORIZE that if the tenant fails to comply with my order above, even if it is only one more late payment, the landlord may issue

another 1 Month Notice to End Tenancy for Cause to the tenant citing the reason:

“Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.” This stated reason corresponds to section 47(1)(l) in the Act.

Conclusion

The 1 Month Notice dated March 16, 2020 is cancelled and the tenancy continues at this time.

I have issued an order to the tenant requiring him to pay rent in full on or before the first day of every month from this date forward.

If the tenant fails to comply with my order the landlord is at liberty to issue another 1 Month Notice under section 47(1)(l) of the Act.

The tenant's monetary claim is dismissed.

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: May 21, 2020

Residential Tenancy Branch