



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package via email on March 28, 2020. Both parties confirmed the tenants did not serve the landlord with either their submitted documentary evidence, nor the late submitted documentary evidence package(s). On this basis, I find that the tenants failed to comply with the Rules of Procedure regarding service of documents and exclude both the tenants' documentary evidence and the late documentary evidence package(s) from consideration in this hearing. Both parties confirmed that the landlord served her documentary evidence package via email to the tenants. Neither party raised any other service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the landlord's documentary evidence package.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on April 1, 2016 and that the monthly rent was \$1,550.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid.

Both parties confirmed that on March 7, 2020, the landlord served the tenant with the 1 Month Notice dated March 6, 2020. The 1 Month Notice sets out an effective end of tenancy date of April 9, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has engaged in illegal activity that has, or is likely to:
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of cause state:

Rent Paid Late	Oct 2019,	Paid Oct 3/2019
	Jan 2020,	Paid Jan 4/2020
	Feb 2020,	Paid Feb 11/2020
	March 2020,	

Tenant refused landlord access, after notice was provided
Tenant indicated police would be called for Break & Enter
Jan 7 2020- Notice given Dec 10/2020
Feb 4 2020- Notice given Jan 7/2020

During the hearing both parties were notified that as the 1 month notice was served on March 7, 2020 posted to the rental unit door and that monthly rent is payable on the 1st, the landlord's 1 month notice effective end of tenancy date is corrected to April 30, 2020.

The tenants argued that the reasons selected on the 1 month notice dated March 7, 2020 were dealt with in a previous dispute resolution hearing on March 4, 2020. The landlord disputed this claim arguing that the notice(s) referred to were not dealt with in that decision only the details of one late rent payment. A review of the decision dated March 4, 2020 (noted on the cover of this decision) revealed that the tenant had filed two separate applications. In the first, an application for emergency repairs and in the second, an application for repairs, an order reducing rent for repairs, services or

facilities agreed upon but not provided, a monetary claim for money owed or compensation, an order to suspend or set conditions on the landlord's right to enter the rental unit, an order authorizing the tenants to change the locks, an order cancelling the 1 month notice dated December 27, 2019 and an order relating to a disputed rent increase. An amendment was filed for the second application whereas the tenants seek an order to cancel a to end tenancy for unpaid rent, an order to cancel a notice to end tenancy for cause and a monetary claim for compensation. The Arbitrator in that decision found that neither party had provided copies of the amendment notice(s) and were not considered in that decision. During the hearing, the Arbitrator dismissed with leave to reapply all of the tenants' claims except the tenant's request to cancel the 1 month notice dated December 27, 2019. In that hearing the landlord put forward the claim that the tenants are repeatedly late paying rent. The tenant argued that they were only late only one time in paying the rent. In the March 4, 2020 decision the arbitrator found that the landlord had failed to provide sufficient evidence to uphold the rental unit based upon only one recent late payment at the time the 1 month notice was issued.

In this hearing the landlord has provided details stating that the tenants were repeatedly late paying rent on:

October 2019	Rent Paid, October 3, 2019
January 2020	Rent Paid, January 4, 2020
February 2020	Rent Paid, February 11, 2020
March 2020	Rent Paid, March 20, 2020

The tenants confirmed that they were late paying rent on all three occasions noted by the landlord in 2020. Both parties confirmed that the one occasion of late rent payment was noted in the previous hearing was in reference to October 2019.

In this hearing the landlord stated that the second reason for cause selected was thjat she believes the tenants have jeopardized a lawful right or interest of another occupant or the landlord. The landlord stated that there is no illegal activity by the tenants or a person permitted on the property by the tenant. The landlord stated that she had chosen only to select the partial section of this notice for reasons for cause. The landlord confirmed that this was an error on her part. As such, the landlord confirmed that there was no illegal activity by the tenants. On this basis, I find that the second reason for cause is dismissed.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed affirmed testimony of both parties and find that the landlord has provided sufficient evidence that the tenants have paid rent late on at least 3 occasions as confirmed by the tenants in their direct testimony. Residential Tenancy Branch Policy Guideline #38, Repeatedly late payments of rent confirms that three late payments of rent are the minimum number sufficient to justify issuing a notice to end tenancy. Both parties confirmed that the tenants have repeatedly late payments of rent for January, February and March 2020. I find that the tenants request to cancel the 1 month notice dated March 6, 2020 is dismissed. The 1 month notice is upheld. As such, I find that the landlord is entitled to an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession.

The tenants must be served with this order. If the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 19, 2020

Residential Tenancy Branch