Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNC

Introduction

On January 7, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*").

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms.

The Tenant attended the hearing, and both Landlords attended as well. All parties in attendance provided a solemn affirmation.

The Tenant advised that he only served the Landlords with one Notice of Hearing package by registered mail on or around January 8, 2021. Landlord D.K. confirmed that they received this package and they did not have any position with respect to only being served this one package contrary to Rule 3.1 of the Rules of Procedure. As such, I am satisfied that the Landlords were duly served the Notice of Hearing package and that the hearing could continue.

The Tenant advised that he did not submit any evidence for consideration on this file.

D.K. advised that they did not serve their evidence to the Tenant because the Tenant already had these documents. The Tenant confirmed that he had some documents, but he did not recall others. As the Landlords did not serve their evidence in accordance with Rule 3.15 of the Rules of Procedure, I have excluded all of the Landlords' evidence and will not consider it when rendering 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlords' Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on December 1, 2019, that the rent was established in the amount of $3,150.00 per month, and that it was due on the first day of each month. A security deposit was paid in the amount of $1,575.00. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant on December 30, 2020 by hand. The reason the Landlords served the Notice is because the "Tenant is repeatedly late paying rent." The Notice also indicated that the effective end date of the tenancy was February 1, 2021.

D.K. advised that the Tenant paid rent late in December 2019, and in January, February, March, November, and December 2020. He advised that each time the

Tenant paid rent late, they would email, text, and phone the Tenant requesting the rent. He stated that the Tenant would respond and apologize for the late payments.

The Tenant advised that he had a daily limit of $3,000.00 that he could electronically transfer for rent. He stated that he had other payments to make, that he discussed these issues with the Landlords, and that he was "under the impression" that the Landlords were amenable with the late payments. He submitted that he "ran into trouble in November 2020" and advised the Landlords that this would stretch into mid-February 2021. He stated that the Landlords contacted him in November 2020 and the parties "sort of agreed in advance" about allowing him not to pay rent on time. He confirmed that he was late paying rent according to D.K.'s testimony, but he "does not remember" if they contacted him regarding each late payment. He stated that he did not have any agreement in writing with the Landlords to allow for late payment of rent.

D.K. advised that there was never any verbal or written agreement allowing the Tenant not to pay rent on the first day of each month.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlords' One Month Notice to End Tenancy for Cause to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that the Landlords may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: 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;

In addition, I note the wording of Policy Guideline # 38 provides the following guidance regarding the circumstances whereby the Landlords 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...*
>
> *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.*

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. While the Tenant alleges to have had an agreement or an "understanding" that he was permitted to pay rent on a day other than the day rent was due pursuant to the tenancy agreement, I find that he has provided insufficient evidence to support this claim. Based on the consistent and undisputed evidence before me, I am satisfied that the Tenant has paid rent late for the months of December 2019, and January, February, March, November, and December 2020. As such, I find that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of this Notice.

Consequently, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on April 30, 2021** after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlords are provided with a formal copy of an Order of Possession effective at **1:00 PM on April 30, 2021 after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises 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 6, 2021

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Residential Tenancy Branch