



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DENFOR INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On May 31, 2021, the Tenants submitted an Application for Dispute Resolution requesting to cancel a One Month Notice to End Tenancy for Cause dated May 14, 2021.

The matter was set for a conference call hearing. The Landlord's agents ("the Landlord") and the Tenant K.P. appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

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.

Preliminary and Procedural Matters

The Landlord testified that they served a copy of their documentary evidence to the Tenant using registered mail sent to the Tenant at the dispute address on August 20, 2021. The Landlord's documentary evidence contains a copy of the tenancy agreement and copies notices to end tenancy that had been issued to the Tenant when the rent was paid late. The Landlord's evidence also contained copies of caution letters sent to the Tenant with respect to late payment of rent. The Landlord provided a copy of a registered mail receipt in support of their testimony that the Tenant was served with the documents.

The Tenant testified that he did not receive the Landlord's documentary evidence. He stated that he has a disability that sometimes prevents / affects him from leaving his home. The Tenant stated that during the tenancy he recalls receiving some of the 10 Day Notices and caution letters issued by the Landlord.

I find that the Landlord's documentary evidence was served by registered mail in accordance with sections 89 and 90 of the Act. The Documents are deemed to have been received on August 25, 2021 the fifth day after they were mailed. I also find that the majority of the Landlord's documentary evidence, such as the 10 Day Notices and the caution letters were previously served to the Tenant during the tenancy. I find that the Landlord's evidence should not be a surprise to the Tenant.

The Landlord's evidence is admitted and was considered in making this decision.

The Tenant did not provide the Residential Tenancy Branch or the Landlord with any documentary evidence in support of his application to cancel the One Month Notice. The Tenant provided direct testimony in response to the Landlord's evidence.

Issue to be Decided

- Is the tenancy ending due to repeated late payment of rent?

Background and Evidence

The Landlords and Tenant provided affirmed testimony that the tenancy began on June 1, 2019 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. The parties agreed that rent in the amount of \$2,495.00 is to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenant was served with the One Month Notice on May 17, 2021 by registered mail. The reason cited for ending the tenancy within the One Month Notice is:

- *Tenant is repeatedly late paying rent.*

The One Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenants received the One Month Notice and disputed it on May 31, 2021 within the required 10-day time period.

The Landlord testified that the Tenants were late paying the rent for the months of February, March, April, and May 2021. The Landlord stated that the Tenants were issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for each of the above stated months that the rent was paid late. The Landlord provided copies of the 10 Day Notices in support of their testimony. The Landlord provided proof of service documents containing witness statements attesting to the service of the 10 Day Notices.

The Landlord testified that they served the Tenants with caution notices regarding the late payments of rent and the requirement to pay the rent on time. The Landlord provided copies of caution notices dated in February, March, and April 2021. I note that the April 2021 caution notices provides: *"Any further late payments of rent will result in a notice to end tenancy. Rent is due on the 1st of each month."*

The Landlord testified that after the Tenants again paid the rent late for May 2021, the Landlord issued the One Month Notice.

The Landlord stated that the Tenants were also late paying the rent in the 2020 calendar year; however, the Landlord could not take any action due to the moratorium on evictions due to covid 19.

The Landlord testified that after they issued the One Month Notice, the Tenant has continued to pay the rent late.

The Tenant testified that he was designated with a disability in January 2020 and stated that it can be difficult to get to the bank. The Tenant stated that he could not get to the bank earlier in the month because he often did not have the rent available in his account until the 1st.

The Tenant stated that in the 2020 calendar year he paid the rent late on occasion and the Landlord stated that it was no big deal and that it was no problem. With respect to the late rent payments in 2021, the Tenant testified that he recalls getting a letter from the Landlord in March 2021 and a notice to end tenancy from the Landlord in April 2021. The Tenant stated that he informed the Landlord he is struggling with his condition.

The Tenant submitted that he was allowed to pay the rent late previously and now it's a big deal. The Tenant suggested that there was agreement that he was permitted to pay the rent late.

The Landlord replied that there was no agreement permitting the Tenant to pay the rent late.

Analysis

Section 26 of the Act provides 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.

Section 47 of the Act provides that a Landlord may end a tenancy by giving a Notice to end the tenancy if the Tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 Repeated Late Payment of Rent provides the following guidance:

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late. Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows:

I find that the tenancy agreement requires the rent to be paid to the Landlord on or before the first day of each month. I have considered the Tenant’s suggestion that there was agreement permitting the Tenants to pay the rent late. I find that it is reasonable to accept that the Landlords took no action to deal with the Tenants’ late rent payments during the moratorium period. I find that any lack of action by the Landlord during the moratorium is not implicit permission or consent allowing late payment of rent. I find that the Landlord clearly identified in 2021 when they served the Tenants with the caution notices that they expected the rent to be paid on time.

In addition, I find that the Tenants were served with 10 Day Notice to End Tenancy for Unpaid Rent when the rent was paid late in February, March, and April 2021, and these

Notices should have served as additional notice to the Tenants that the Landlord expected the rent to be paid on time.

I find that the Tenants breached the tenancy agreement by paying the rent late for the months of February, March, April, and May 2021. I find that the Landlord has sufficient reason to end the tenancy due to repeated late payment of rent.

I dismiss the Tenant's Application to cancel the One Month Notice dated May 14, 2021. The tenancy is ending. The effective date of the One Month Notice is June 30, 2021.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with requirements for form and content, and I find that the Landlord is entitled to an order of possession effective two days after service on the Tenants. This order of possession may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I grant the Landlord an order of possession for the rental unit effective two days after service on the Tenants. For enforcement, the Tenants must be served with the order of possession. Should the Tenant fail to comply with the 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: September 29, 2021

Residential Tenancy Branch