



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP FF

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The rental unit is the upper floor of a residential house. A written tenancy agreement was entered into and signed by the parties on September 30, 2020. A copy of the written agreement was provided on file. The tenancy began on October 1, 2020, with a monthly rent of \$1750.00 payable on the 1st day of each month. The tenant paid a security deposit of \$875.00 at the start of the tenancy.

The landlord served the tenant with the One Month Notice by registered mail on January 21, 2022. The One Month Notice was issued on the grounds that the tenant is repeatedly late paying rent. The tenant acknowledged receipt of the One Month Notice. The effective date on the One Month Notice was February 28, 2022.

The landlord's agent took over management of the property in June 2021. The landlord's agent provided a tenant ledger dating back to July 2021. The landlord's agent testified that at the time of taking over management of the property the tenant was informed that rent payments were now to be made to the management firm directly. The landlord's agent submits that the tenant has been late paying rent every month since they took over management which is supported by the tenant ledger. The landlord's agent testified that he has had to constantly phone and nag the tenant to make rent payments and consequently they always miss their own due date to make payments to the owner in turn. The landlord's agent submits that since June 2021 he has also issued at least two 10 Day Notices to the tenant for failure to pay rent on time.

The tenant testified that since the beginning of the tenancy he had a verbal agreement with the landlord to pay the rent bi-weekly. The tenant submits the agreement was with "Kuljeet" who used to be the business partner of the landlord. The tenant submitted e-transfer records dating back to the start of the tenancy which reflect rent payments being made to "Kuljeet". The tenant testified that due to personal and financial issues he was not able to pay the rent on time and the landlord was okay with this. The tenant testified that he lost his job several times since the beginning of the tenancy, but he has gotten more established since. The tenant submits the late payments only became an issue after "Kuljeet" left and the landlord retained the services of the property management company. The tenant testified that the late payments also only became an issue after he made various requests for repairs to the property.

In reply, the landlord's agent testified that he spoke to the landlord who denied ever having any verbal agreement for bi-weekly rent payments with the tenant.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

It was not disputed that rent was paid late on at least a minimum of three occasions in the recent past. In fact it was not paid as required by the tenancy agreement, in full on the 1st day of the month, pretty much every month since the beginning of the tenancy in October 2020. I do not accept the tenant's submission that there was a verbal agreement in place with the landlord's business partner "Kuljeet" to pay rent on a bi-weekly basis. The tenant failed to provide sufficient evidence of such. The landlord's agent testified that the landlord denied any such agreement. Neither party produced "Kuljeet" as a witness at the hearing. Further the payment history evidence submitted on file by both parties does not support the tenant's argument of bi-weekly rent payments. Rather the payments appear to have been made on sporadic dates throughout the tenancy. Payments were sometimes \$1000.00 and sometimes \$750.00 with no readily visible pattern. In the tenant's defense, it is evident that prior to the hiring of the property management company the landlord was very lenient with the rent due date. However, this does not mean there was an agreement to pay rent late. Rather, I find that after June 2021 the tenant was put on notice that this was no longer acceptable. This is evident by the fact that the tenant was issued 10 Day Notices on at least two separate occasions when rent was late. I find the tenant continued to pay rent late which eventually resulted in the landlord issuing the One Month Notice on June 21, 2022. Having found there was not any "agreement" for bi-weekly or late rent payments to begin with, I find the tenants argument that this only became an issue after he requested repairs to be without merit.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of repeated late payments. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenancy has ended, the tenant's application for repairs to the rental unit is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this order on the tenant**. Should the tenant(s) 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: May 27, 2022

Residential Tenancy Branch