



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 30, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 18, 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On January 02, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via registered mail, on January 05, 2023. After I explained the documents submitted by the Landlord, the Tenant acknowledged receipt of it. As the Tenant acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that rent for this unit is due by the first day of each month.

The female Landlord stated that the rent has not been paid when it is due on several occasions during this tenancy. She declared that the rent was not paid when it was due in April and March of 2019; November and December of 2018; August of 2020; July of 2021; and September of 2022.

The Tenant stated that she cannot dispute the testimony of the female Landlord regarding the late payments, as she did not bring banking information for any period prior to 2022. She stated that she did not bring that banking information as she understood the Landlord could only end the tenancy if there were three late payments within a 12 month period.

The following excerpt of Residential Tenancy Branch Policy Guideline 38 was read out for the parties:

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.

The parties were advised that, in my view, there is no requirement that the late payments were all made in the previous 12 months.

After the above matters were discussed, the Landlord and the Tenant mutually agreed to settle all issues in dispute at these proceedings by mutually agreement to end the tenancy on March 31, 2023.

The aforementioned settlement agreement was summarized for the parties on at least two occasions. All parties present clearly indicated their intent to resolve this dispute under these terms.

Each party acknowledged that they understand they were not required to enter into this agreement and that they were doing so voluntarily.

Each party acknowledged that they understood the agreement was final and binding.

Analysis

All issues in dispute at these proceedings have been settled in accordance with the aforementioned agreement.

Conclusion

On the basis of the settlement agreement, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2023. This Order may be served on the Tenant, filed with 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: February 04, 2023

Residential Tenancy Branch