



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for an order to cancel the landlord's one month notice to end tenancy for cause.

Issue(s) to be Decided

Was the tenant repeatedly late paying rent?

Background and Evidence

The landlord and tenant entered into a one-year lease for the premises on July 4, 2022. In addition to the tenant, six other family members were listed as occupants of the premises in the lease. The term of the lease commenced August 1, 2022, with the \$3,500 monthly rent payable on the first day of the month. A security deposit of \$1,750 was also collected, and the landlord testified to maintaining these funds on account. As of the hearing, the tenant continues to reside in the rental premises.

The landlord testified that the tenant had been repeatedly late in paying monthly rent during the course of the tenancy. The landlord had previously issued 10-day Notices to End Tenancy for Unpaid Rent on tenant on December 2, 2023; January 2, 2023; and, February 2, 2023. Each time the tenant paid the outstanding rent within the time permitted under the Act. The landlord repeatedly informed the tenant that rent was due on the first of each month under the lease, and it was expected the tenant would pay in a timely manner.

The landlord served by email a One-Month Notice to End Tenancy for Cause based upon the tenant's repeated late payment of rent. The Notice, dated February 15, 2023, provided a move-out date of March 31, 2023. The Notice was served on the tenant on February 19, 2023 by email. The tenant admitted receipt of the Notice on that date and on March 3, 2023, filed an application to cancel the notice, culminating in this hearing.

During the hearing, the landlord provided bank records in support of the landlord's position that rent was late in October, November and December, 2022; as well as January and February 2023. There was no dispute that rent was timely paid for March, 2023. The landlord provided a bank record of deposit in support of the Notice to End Tenancy.

The tenant admitted that the monthly rental payments for December, 2022, January and February, 2023 were late, but for reasons the tenant ascribed to factors beyond the tenant's control. The tenant explained that the late payments were the result of the bank freezing the tenant's account based upon a complaint of suspected fraud; the tenant's employer failed to make timely payroll; and, the need to assist in the payment of funeral expenses for a relative overseas. The tenant did not provide documentary evidence from the bank regarding the "freezing" of the account, nor a statement from the employer regarding a late payroll payment. The tenant denied that rent for October and November, 2022, were late.

Analysis

Section 47(1)(b) of the Act provides that a landlord may, by giving notice, end a tenancy when the tenant is repeatedly late paying rent. Section 47(2) requires that the notice state the tenancy termination date not earlier than one month after the notice is received, and a day prior to the rent due date under the tenancy agreement.

Residential Tenancy Policy Guideline 38 addresses repeated late rent payments. It notes "a landlord 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.” Additionally, the Guideline states that a landlord must act in a timely manner to end the tenancy when rent has been repeatedly late.

In this case the Landlord repeatedly reminded the tenant that rent was due on the 1st day of the month. The Notice to End the Tenancy for Cause was dated February 15, 2023 and was provided an effective date of March 31, 2023 for termination of the tenancy. The Notice was served on the Tenant to the email address provided by the Tenant in the lease for service. The Landlord provided documentary evidence that the Tenant was late paying rent for October and December, 2022; and, January and February, 2023. The Tenant admitted rent was late for December 2022 as well as January and February 2023.

I find that the Notice to End Tenancy for Cause was consistent with the Act’s requirements and validly served on the Tenant. I find that the Landlord has presented persuasive evidence of repeated late rent payments by the Tenant, that the Tenant was repeatedly advised that rent was due on the first of each month prior to initiating this action to terminate the tenancy. I find the Landlord is entitled to end the tenancy under Section 47(1)(b) of the Act. The Tenant’s request for the filing fee is not granted.

Conclusion

The Tenant’s application is dismissed. Pursuant to sections 62(3) and 68(2) of the Act, I order that the tenancy terminates April 30, 2023.

I grant an order of possession to the Landlord. The Landlord should serve the order to the Tenant immediately. Should the tenant fail to move out within two days after receiving the order, the Landlord may enforce the order in 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 23, 2023

Residential Tenancy Branch