



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 scheduled to convene at 1:30 p.m. on June 2, 2023 concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant indicated that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on February 12, 2023 and was permitted to provide proof of such service after the hearing concluded. I now have a Canada Post Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date and a tracking number, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause dated January 31, 2023 be cancelled?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 was originally

payable on the 1st day of each month, which has been increased each year, and is currently \$1,553.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, both of which are still held in trust by the landlord. The rental unit is a ground floor in a house, with an upper level suite which is also rented. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that on February 1, 2023 the tenant was served with a One Month Notice to End Tenancy for Cause and a copy has been provided for this hearing. It is dated January 31, 2023 and contains an effective date of vacancy of April 30, 2023. The reason for issuing it states: Tenant is repeatedly late paying rent. The Details of the Event(s) states: "Tenant repeatedly paid rent late. Tenant has not responded to landlord repeated requirement of sending cheques for rent. Tenant did not follow landlord instructions regarding requirements by the City of West Kelowna – moved necessary structure in the driveway when she was clearly advised not to alter. Tenant signed an addendum (attached) that states, 'The landlord can give two months' notice to end the tenancy without reason or compensation to the tenants.' This tenant/landlord agreement is no longer viable and landlord is choosing to exercise its right as outlined in the signed addendum. Landlord is also offering more than 2 months' notice to allow for a longer grace period for tenant."

The tenant testified that since filing this application the landlord has now provided the tenant with receipts. Within the first couple of months of moving in the tenant paid the rent on the 2nd day of the months, and there were no issues. The tenant has been late with rent twice over 3 years.

The landlord sent an email to the tenant saying that the landlord was happy to try again and has now changed banking so that the tenant can e-transfer the rent automatically to the landlord.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the landlord has not provided any evidentiary material, and did not attend the hearing to testify. Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues until it has ended in accordance with the law.

I also consider the Addendum to the tenancy agreement which specifies: “The landlord can give two months’ notice to end the tenancy without reason or compensation to the tenants.” I find that term to be unconscionable and contrary to the law, and cannot be enforced.

Since the tenant has been successful with the application the tenant is entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount. Alternatively, the tenant may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated January 31, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: June 15, 2023

Residential Tenancy Branch