



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes CNC RR RP OLC FFT

Introduction

The Tenants seeks various relief under the *Residential Tenancy Act* (the “Act”), including that of an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice”). All relief sought, other than for the order cancelling the Notice and for recovery of the application fee are dismissed, with leave to reapply.

A hearing for this application was first convened on April 17, 2023, at which time it was adjourned to July 17, 2023. (See Interim Decision, dated April 17, 2023).

Issue

Are the Tenants entitled to an order cancelling the Notice?

Evidence and Analysis

In a dispute resolution proceeding in which a tenant disputes a notice to end a tenancy, it is the respondent landlord who must prove the reason for issuing the notice to end the tenancy on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that is relevant and necessary to explain the decision.

The tenancy began on November 1, 2021, and it is a fixed-term tenancy ending in October 2023. A copy of the tenancy agreement is before me in evidence. As set out in the tenancy agreement, monthly rent of \$15,500.00 is due on the first day of the month.

The Landlords issued and served the Notice on February 7, 2023. A copy of the Notice was in evidence and the parties do not dispute that the Notice was issued under section 47(1)(b) of the Act for repeated late payment of rent. The “Details of Cause(s)” section on page 2 of the Notice sets out the late payment information as follows:

Rent of \$15,500 due on August 1, 2022 for the month of August, 2022 was paid late on August 17, 2022 following service of a RTB - 30 10 day notice to tenant on August 15, 2022 • Rent of \$15,500 due on September 1, 2022 for the month of September 2022 was paid late on September 9, 2022 following service of a RTB - 30 10 day notice to tenant on September 8, 2022. • Rent of \$15,500 due on October 1, 2022 for the month of October 2022 was paid late on October 12, 2022 following service of a RTB - 30 10 day notice to tenant on October 9, 2022. • Rent of \$15,500 due on November 1, 2023 for the month of November 2023 was paid late on November 2, 2023. • Rent of \$15,500 due on January 1, 2023 for the month of January was paid late on January 4, 2023 • Rent of \$15,500 due on February 1, 2023 for the month of February 2023 was paid late on February 3, 2023

Again, there is no dispute by the Tenants that rent was paid late on several occasions. However, Tenants’ counsel argued that the principle of estoppel ought to estop the Landlords from attempting to end the tenancy based on repeated late payment of rent. Tenants’ counsel referenced both the policy guideline, two previous Residential Tenancy Branch decisions, and *Guevara v. Louie*, 2020 BCSC 380.

As a starting point, the specific section reads as follows (section 47(1) and section 47(1)(b)): “A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] the tenant is repeatedly late paying rent”.

Residential Tenancy Policy Guideline 38 states, in part, the following:

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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In this dispute, the policy guideline itself is of little help, however. Neither party disputes that there were late payments. Rather, the issue is whether estoppel ought to apply.

(As a brief aside, as for the previously cited Residential Tenancy Branch decisions, I do not find them particularly helpful, nor am I bound to rely on them in this decision; see section 64(2) of the Act. Similarly, while I have considered *Guevara*, it is distinguishable from this dispute given that the reason for the late payments in *Guevara* were because of banking or technical errors, which are not entirely what happened here.)

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party’s previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

To return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, the Landlords' failure to make any effort over a period of more than half a year to put the Tenants on notice in respect of the repeated late payment of rent has, through their silence and inaction, provided implied consent for the Tenants to continue paying rent late. That the Tenants paid the \$15,500 rent appears to have sufficed, and that it was late on several occasions did not appear to be an issue until early 2023. While the Landlords purportedly issued two *10 Day Notice to End Tenancy for Unpaid Rent*, this goes to failure to pay rent, not to the late payment of rent.

In summary, having considered the evidence and counsel's arguments and submissions, it is my conclusion that estoppel applies to the notice to end the tenancy. The Landlords are thus estopped from having intended to end the tenancy by way of a notice issued under section 47(1)(b) of the Act. The *One Month Notice to End Tenancy for Cause* dated February 7, 2023, is ordered cancelled effective immediately. The tenancy will continue until it is ended in accordance with the Act and the tenancy agreement.

While I grant the Tenants' application to cancel the Notice, the Tenants are now aware ("put on notice," to use the colloquial phrase) that they must pay the rent on the first day of the month for the remainder of their tenancy. Further, the Landlords are at liberty to issue a further *One Month Notice to End Tenancy for Cause* should the Tenants pay rent late on three or more occasions at any point from now until the end of the tenancy.

Pursuant to section 72(2)(a) of the Act the Tenants may make a one-time deduction of \$100.00 from a future rent payment as compensation for the cost of the application fee.

Conclusion

The Tenants' application to cancel the *One Month Notice to End Tenancy for Cause* dated February 7, 2023, is hereby GRANTED.

This decision is final, binding, and made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: July 18, 2023

Residential Tenancy Branch