



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT; DRI; CNQ; CNC; RPP; OPT; AAT; FF

Introduction

This Hearing was scheduled to hear the Tenant's application to be allowed more time to file his application to cancel a Notice to End Tenancy, to cancel a One Month Notice to End Tenancy for Cause and a Two Month Notice to End Tenancy because the Tenant ceases to qualify for the subsidized rental unit; to dispute an additional rent increase; for an Order that the Landlord return his personal possessions; for an Order of Possession of the rental unit to the Tenant; for an Order allowing access to the rental unit for the Tenant or his guests; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Preliminary Matters

The Tenant applied to be allowed more time to file his application to cancel the Notices to End Tenancy. With respect to his application to cancel the Notice to End Tenancy for Cause (the "Notice"), a tenant has 10 days from receipt of the Notice to file an Application to cancel the Notice. It was established that the Tenant received the Notice on April 1, 2012. The Tenant filed his application on April 5, 2012, and therefore he was within the 10 day time limit. Therefore this portion of his application is not required and is dismissed.

The Tenant's application to cancel a notice to end tenancy issued under Section 49 of the Act is dismissed as it was determined that no such notice exists.

Background and Evidence

The Landlord's agent testified that rent is \$450.00 and is due on the first of the month. She stated that the Tenant has been late paying rent, as follows:

| Rent due | Date rent paid | Balance owing |
|------------------|---------------------------|---------------|
| October 1, 2011 | October 19, 2011 | 0 |
| January 1, 2012 | January 10, 2011 | 0 |
| February 1, 2012 | February 7, 2012, \$50.00 | \$400.00 |

| | | |
|---------------|----------------------------|----------|
| | February 13, 2012 \$400.00 | 0 |
| March 1, 2012 | March 5, 2012 \$10.00 | \$440.00 |
| | March 6, 2012 \$440.00 | 0 |
| April 1, 2012 | | \$450.00 |
| May 1, 2012 | | \$900.00 |

The Tenant testified that he has been late paying rent for 32 months, since he was in a car accident. He stated that he and the Landlord had a verbal agreement that he could pay rent late, when his disability cheque came. The Landlord testified that he only accepted late rent as a favour to the Tenant, but that it was always expected to be paid on the first of the month.

The Landlord's agent testified that she wrote to the Tenant on February 4, 2012, asking him to have his rent paid directly by the Ministry and warning him that the Landlord expected rent to be paid on time. She also testified that she issued a 10 Day Notice to End Tenancy for Unpaid rent on February 6, 2012, and that the Tenant reacted by swearing at her and tearing it up. The Tenant testified that the warning letter, a Notice of Rent Increase and the Notice to End Tenancy were all served on the same day.

A copy of the Notice of Rent Increase issued February 4, 2012, and effective May 31, 2012, was provided in evidence, along with the February 4th letter and a copy of two Notices to End Tenancy for Unpaid Rent, issued February 6, 2012 and March 1, 2012.

The Tenant's witness testified that he is very familiar with the facts surrounding this tenancy and that he has helped the Tenant to make repairs to the rental unit on many occasions. He stated that he knows that the Tenant paid rent regularly on the 1st, 7th or 17th day of the month and that the Landlord appeared to accept the rent late ever since the Tenant was in an accident two or three years ago. The Tenant's Witness also testified that the tenancy agreement included access to a storage area and that the Tenant had been given a key to the storage area. He stated that the Tenant has stored items in the storage area for 7 or 8 years.

Neither party provided a copy of the tenancy agreement, although both parties acknowledged that there was a written tenancy agreement. The Tenant stated that his ex-girlfriend had a copy and took it with her when she moved out of the rental unit. The Landlord testified that his previous property manager did not give him a copy.

The Landlord's agent testified that the Tenant verbally attacked her on October 18, 2011, February 6 and March 21, 2012, using vulgar and profane language, behaving in

an erratic manner, and making her fearful for her safety. The Landlord's agent stated that she wanted the tenancy to end.

The Tenant stated that he overreacted on February 6, 2012, because he was given a notice that the tenancy was ending and that the rent was going up on the same day. He stated that on October 16, 2011, he was upset because he thought he was going to be given the opportunity to move into a certain cabin, but that the Landlord had rented it to new occupants instead. The Tenant testified that the Landlord's agent changed the lock and refused to allow him access to his possessions in the storage shed and refused to give him a key. He denied uttering profanities or threatening the Landlord's agent on any of the dates as alleged by the Landlord's agent.

The Landlord's agent testified that new people moved into the rental unit beside the Tenant on October 16, 2011, and that the Tenant unreasonably disturbed them by walking into their new home, taking pictures and threatening to call the police. The Landlord provided a hand written statement from the Tenant's neighbour in evidence.

Analysis

Regarding the Tenant's application to cancel the Notice to End Tenancy for Cause:

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the onus is on the landlord to prove, on the balance of probability, that the tenancy should end for the reasons indicated on the Notice. In this case, the Landlord seeks to end the tenancy because the Tenant is repeatedly late paying rent and has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I find that the Landlord did not provide sufficient evidence to support his allegation that the Tenant is repeatedly late paying rent. The Residential Tenancy Branch Policy Guidelines provides that generally if a Tenant is late three times over the period of one year, this is enough to be considered "repeatedly late". In this case, both parties agree that the Landlord accepted payment when the Tenant received his disability payments for a period of almost three years before providing the Tenant with a letter in February, 2012, that rent was to be paid on time.

There is contradictory evidence to establish the date that rent is due. The letter and the Notices to End Tenancy both indicate that rent is due in advance on the 31st of the month. During the Hearing, the Landlord and his agent testified that rent was due on the 1st of each month. Although the Tenant has still not paid rent for April or May, 2012, these late payments cannot be included as cause to end the tenancy because they post-date the date of the Notice to End Tenancy. Therefore, I decline to end the tenancy because the Tenant is repeatedly late paying rent. The Tenant was advised that he is still obligated to pay rent for the months of April and May, 2012.

With respect to the second reason, I find that the Landlord has provided sufficient evidence. The Tenant's neighbour's written statement indicates that he saw the Tenant approach the Landlord's agent with a shovel in his hand and that he was "swearing and threatening her". The Tenant's neighbour also indicates that he has heard the Tenant "screaming at night". The Tenant did not deny that he entered the neighbour's home without invitation or consent and took photographs. During his testimony, the Tenant became tearful and emotional.

Based on the Landlord's evidence and the Tenant's own demeanour during the Hearing, I find that the Landlord has provided sufficient evidence, on the balance of probability, that the Tenant has significantly interfered with other occupants and the Landlord's agent and that the Landlord's Notice is a valid notice. The Landlord has a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. I dismiss the Tenant's application to cancel the Notice to End Tenancy.

Based on the testimony of the parties, I am satisfied that the Tenant received the Notice to End Tenancy on April 1, 2012. I find that the effective date of the end of the tenancy is May 31, 2012 and that the Landlord is entitled to an Order of Possession pursuant to the provisions of Section 55(1) of the Act.

With respect to the remainder of the Tenant's application:

Based on the testimony of the Tenant and his witness, I am satisfied that the Tenant had use of the storage facility until March 21, 2012, and that this storage facility was part of the tenancy agreement. I hereby order the Landlord to provide the Tenant with a key to the storage facility immediately. At the end of the tenancy, the Tenant is required to remove his possessions from the storage facility and return the key to the Landlord.

The Notice of Rent Increase indicates that rent is increasing effective May 31, 2012. As the tenancy is ending on May 31, 2012, I dismiss the Tenant's application to dispute the rent increase.

The Tenant's application for an Order of Possession of the rental unit is dismissed.

The Tenant has been successful in his application with respect to the storage facility and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Landlord. The Tenant may deduct \$50.00 from the rent he owes the Landlord in satisfaction of this award.

Conclusion

The Landlord is hereby ordered to provide the Tenant with access to the storage facility and a key to that facility immediately.

The Tenant may deduct \$50.00 from rent owed to the Landlord in satisfaction of his award for recovery of the cost of the filing fee.

The remainder of the Tenant's application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., May 31, 2012**. This Order must be served on the Tenant and may be filed in 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: May 02, 2012.

Residential Tenancy Branch