Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy issued for repeated late payment of rent, and for cause, and to recover the filing fee for the Application.

Both parties appeared for the hearing by teleconference call, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

There have been irregularities by both parties in the dispute resolution process. The Tenant did not serve the Landlords with the Notice of Hearing or her Application within the required three days. The Landlords served the Tenant with their evidence late. The Tenant agreed to accept the evidence of the Landlords, as she alleges it is not truthful in any event. The appearing Landlord agreed to proceed as well. Therefore, I found that this matter should proceed on its merits and the hearing continued.

Issues(s) to be Decided

Has the Tenant been repeatedly late paying rent?

Has the Tenant caused unreasonable noise in the rental unit?

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

This tenancy began on October 26, 2011. The parties entered into a written tenancy agreement, with a fixed one year term to expire on October 31, 2012, and then to continue on a month to month basis. The rent agreed to was $2,300.00 per month, payable on the first day of the month. The Tenant paid a security deposit of $1,150.00 on or about October 26, 2011.

On July 30, 2012, the Landlords issued the Tenant a one month Notice to End Tenancy, with an effective end of tenancy date of August 31, 2012, for repeated late payment of rent and for significantly interfering with or unreasonably disturbing another occupant at the rental unit property (the "Notice").

The Landlord testified that the Tenant has been repeatedly late paying rent. In evidence they submitted cancelled rent payment cheques issued to the Landlords by the Tenant. Most of the cheques are dated for the second day of the month. However, in June of 2012, the rent cheques began to be dated for the fourth day of the month.

The Tenant filed her Application on August 9, 2012, and wrote in the particulars that she withheld the rent payable for August 2012, and would hold it until the Landlords fixed the floor. The Tenant subsequently learned that she could not withhold rent under the Act, and paid the Landlords August 2012 rent.

During the course of the hearing the Tenant testified she had not yet paid the September 2012 rent.

The Tenant testified that the Landlords had agreed to allow her to pay her rent on the second day of the month, due to her pay cheque cycle. The Tenant testified that she is suffering from serious health problems and that is why the rent has been paid later recently.

The Tenant further testified that the Landlords had no problem with her paying the rent late, until they were fined by the Strata Council where the rental unit is located, due to alleged noise coming from the rental unit. The Tenant testified that she went to the Council and disputed the noise fines. The Tenant alleges the Landlords did not install the floor in the rental unit properly, and the noise travels to the suite below. The Strata then fined the Landlords. The Tenant did not provide any documentary evidence to support this allegation, such as correspondence with the Strata Council.

In reply, the Landlord testified that they initially accepted rent on the second day, however, over the past few months the Tenant has been paying the rent later and later in the month.

The Landlords provided copies of the rent cheques showing the Tenant had paid rent on the second day of the month from the outset of the tenancy up to May of 2012, following that the Tenant paid the rent on June 4th and July 4th. The Tenant was late in August as described above, and has not paid the September rent as of the date of this hearing.

<u>Analysis</u>

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant has been repeatedly late paying rent on at least four occasions, in the past five months of the tenancy. The Tenant paid rent late in June, July and August, and has not paid September rent as of the 10th day of the month.

While the Landlords may have agreed to accept the rent on the second day of the month for some months, the rent was always due on the first day of the month, as per the tenancy agreement. The tenancy agreement was not changed to allow the Tenant to pay late rent, as both parties did not sign for any changes to the contract.

The Tenant is now showing a pattern of paying the rent later than the second day of the month, and has withheld rent without authority to do so under the Act, for the past two months. The Landlords are entitled under the contract to have rent paid on the first day of the month. The Tenant has repeatedly failed to do this. In fact, there is no evidence before me the Tenant paid the rent on time after the first month of the tenancy.

Policy guideline 38 states, in part:

> The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that 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. 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.

> [**Emphasis** added.]

I find that the late payments are not sufficiently far apart to conclude the Tenant is not repeatedly late paying rent.

Therefore, I find that the Notice is valid and should not be cancelled. I dismiss the Tenant's Application for Dispute Resolution.

Due to these findings, it is not necessary to determine the issue of the alleged noise coming from the rental unit.

Following my dismissal of the Tenant's Application, the Landlord orally requested an order of possession. Under section 55 of the Act, I must grant that request.

The Landlord requested an order of possession to be effective at the end of September provided the Tenant pays the Landlords the September 2012 rent. The Tenant promised to pay the Landlords the September rent before September 15, 2012.

Therefore, I grant and issue the Landlords an order of possession effective at **1:00 p.m. September 30, 2012**. This order must be served on the Tenant and may be filed and enforced through the Supreme Court of British Columbia.

If the Tenant fails to pay the September 2012 rent as promised to the Landlords, the Landlords may apply for an order ending the tenancy sooner and for a monetary order to keep the security deposit for rent due.

Conclusion and Orders

The Tenant has been found to be repeatedly late paying rent and therefore, the Notice to End Tenancy is not cancelled. The Tenant's Application was dismissed and the Landlords requested an order of possession. **The Tenant must vacate the rental unit no later than 1:00 p.m. September 30, 2012.**

If the Tenant fails to pay September rent as promised to the Landlords, the Landlords may apply for an order ending the tenancy sooner.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: September 10, 2012.

Residential Tenancy Branch