



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by each of the parties.

The Tenant filed his Application on December 12, 2013, seeking to cancel a one month Notice to End Tenancy for cause, issued by the Landlord.

The Landlord filed his Application on January 16, 2014, seeking an order of possession based on a one month Notice to End Tenancy for cause, a monetary order for damage to the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

No issues of evidence were raised by the parties. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

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

Is the Landlord entitled to monetary compensation for alleged damage to the rental unit?

Background and Evidence

The parties agreed that the tenancy had started on or about October 1, 2012. The parties agreed they had no written tenancy agreement. I note that under the legislation oral tenancy agreements are valid, and that there are statutory provisions that apply to all tenancies in the province, whether the agreement is made in oral or written form. The rent was \$900.00 per month, payable on the first day of the month. No security or pet damage deposits had been paid by the Tenant to the Landlord.

The parties agreed that the rental unit is located in a high crime area in the community in which it is located.

As the hearing involved a disputed Notice to End Tenancy, the Landlord presented their evidence first to explain why the Notice to End Tenancy had been issued.

The Landlord testified he gave the Tenant the one month Notice to End Tenancy for two causes. The first was repeated late payment of rent; the second cause was the Tenant has allowed too many occupants into the rental unit.

The Landlord spoke to the first issue and testified that the Tenant had been repeatedly late paying rent for many months in 2013. The Landlord testified that the rent was paid on time for January and February of 2014, after the one month Notice to End Tenancy had been served on the Tenant.

The Notice to End Tenancy was dated December 3, 2013 and dated for the tenancy to end on January 4, 2014. I note that under the Act, the effective end date would automatically correct to January 31, 2014, as the one month is calculated as the month after the next rent payment due date.

The Landlord testified that the Tenant had followed the same pattern for many months. There would be a partial payment of rent on the first day of the month, and then the balance of rent due would be paid later in the month. The Landlord testified the Tenant was late paying rent in August, September, October, November and December of 2013. The Landlord testified that the Tenant had been late many times in the months preceding August of 2013, as well.

The Tenant testified that he had been on time paying the rent for January and February of 2014. The Tenant disputed he was late paying the December 2013 rent; however, the Tenant agreed he had been late paying the rents in August, September, October and November of 2013. The Tenant testified he was late paying the rents because the

occupants he had rented rooms out to had been late paying him, and explained it was a poor neighbourhood.

The Landlord also sought a monetary order for alleged damage to the rental unit.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the one month Notice to End Tenancy is valid and should not be cancelled, and therefore, I allow the Landlord's Application on the Notice to End Tenancy and grant the Landlord an order of possession, and I dismiss the Tenant's Application without leave to reapply.

In this instance I find the Tenant's own testimony was that he was late paying rent for the four months of August, September, October and November of 2013. The Landlord's evidence was that the Tenant had been late paying rent for many of the months before August 2013 as well.

The *Residential Tenancy Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Under policy guideline 38, three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline explains, "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. "

In this instance, I find the Tenant has been repeatedly late paying rent, based on his own testimony, at least four times in the past seven months. I find the location of the rental unit is not relevant to the rent being late. Furthermore, under section 26 of the Act, the Tenant must pay his rent on time, even if the Landlord was in breach of the Act or the tenancy agreement.

I do not need to address the issue of too many occupants, as the Notice to End Tenancy has been found valid on the first issue. I dismiss this portion of the Landlord's claims.

The Landlord also claimed for damage to the rental unit. I dismiss this portion of the Landlord's claims as being premature; however, the Landlord has leave to reapply following the end of the tenancy if the Tenant does not make the alleged repairs. I explained to both parties that the Tenant has a right until the end of the tenancy to make any repairs for things he may have damaged in the rental unit, and therefore, the Landlord was premature in requesting compensation for the alleged damages.

Having found that the one month Notice to End Tenancy was valid for the cause of repeated late payment of rent, I grant the Landlord an order of possession for the rental unit. As the Tenant had paid rents until the end of February, the Landlord agreed the order of possession should be effective for **1:00 p.m. February 28, 2014**.

This order is binding on the Tenant and any occupants or guests residing in the rental unit.

I grant and issue the Landlord an order of possession in those terms. The Landlord must serve the Tenant with a copy of the order. This order is enforceable in the Supreme Court of British Columbia.

Lastly, as he was successful in his Application I allow the Landlord **\$50.00** to recover the filing fee for the Application. I grant and issue the Landlord a monetary order in those terms. The order must be served on the Tenant and is enforceable through the Provincial Court (Small Claims Division).

Conclusion

I find the Notice to End Tenancy is valid, based on the Tenant's own testimony he was late paying rent in four of the last seven months. The Landlord is granted an order of possession effective at **1:00 p.m. February 28, 2014**, and a monetary order to recover the \$50.00 filing fee for the Application.

This decision is final and binding on the parties, unless 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 Act.

Dated: February 03, 2014

Residential Tenancy Branch

