



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC LRE LAT FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause, for an order to suspend or set conditions of the landlord’s right to enter the rental unit, for authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

The tenant and an agent for the landlord (the “agent”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all 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.

The tenant confirmed that he received the landlord’s documentary evidence and that he had the opportunity to review the landlord’s evidence prior to the hearing. The agent stated the he did not receive the tenant’s documentary evidence. As the tenant’s documentary evidence was served late and not in accordance with the Rules of Procedure, the tenant’s documentary evidence was excluded from the hearing. I find the tenant was sufficiently served in accordance with the *Act*.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the landlord’s right to enter the rental unit be suspended or have conditions set?
- Should the tenant be authorized to change the locks to the rental unit?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on July 15, 2011, and although it was scheduled to end on July 31, 2012, as the landlord accepted rent after July 31, 2012, the tenancy agreement automatically reverted to a month to month tenancy agreement. Monthly rent of \$750.00 was due on the first day of each month.

The tenant confirmed that he received a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated June 11, 2014 on or about June 29, 2014. The 1 Month Notice alleges two causes including the repeated late payment of rent and breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. The tenant disputed the 1 Month Notice on July 4, 2014. The effective vacancy date indicated on the 1 Month Notice is listed as July 31, 2014. The tenant confirmed that he received both pages of the 1 Month Notice.

During the hearing, the agent testified that the tenant paid the rent late as follows:

1. January 2014 rent due January 1, 2014 was paid in two installments, \$200.00 on January 14, 2014 and \$500.00 on January 24, 2014.
2. February 2014 rent due February 1, 2014 was paid on March 14, 2014.
3. March 2014 rent due March 1, 2014 was also paid on March 14, 2014.
4. April 2014 rent due April 1, 2014 was paid on April 9, 2014.

The tenant testified under oath that he "could not remember" when he paid the rent. During the hearing, the agent verbally requested an order of possession as soon as possible.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant request to cancel 1 Month Notice – Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of agent's undisputed testimony and the fact that the tenant could not remember when he paid the rent, I find that the tenant paid his rent late on at least four occasions as described above. I did not find it necessary to consider further testimony regarding additional late payments of rent. I did not find it necessary to consider the second cause listed on the 1

Month Notice as the landlord succeeded in proving the first cause. Therefore, **I dismiss** the tenant's application to cancel the 1 Month Notice and I uphold the landlord's 1 Month Notice dated June 11, 2014 with an effective vacancy date of July 31, 2014. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

As the landlord requested an order of possession during the hearing and the tenant continues to occupy the rental unit, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days after service on the tenant** as the effective vacancy date of the 1 Month Notice has already passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As I have granted an order of possession, **I dismiss** the remainder of the tenant's application without leave to reapply as the tenancy will not be continuing. I do not grant the tenant the recovery of the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

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 *Residential Tenancy Act*.

Dated: September 5, 2014

Residential Tenancy Branch

