



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMS PROPERTY MANAGER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the notice of hearing package and the tenant's submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence. I accept the undisputed affirmed testimony of both parties and find that both have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

At the outset the landlord clarified that she was an agent of the management company on behalf of the owners. The landlord's agent (the landlord) provided the proper name of the management company. The tenant made no comment. As such, I order that the tenant's application be amended to properly reflect the name of the landlord.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The landlord stated that the tenant was served with a 1 Month Notice dated December 11, 2015 displaying an effective end of tenancy date of January 31, 2015 and one reason for cause:

Tenant is repeatedly late paying rent.

The landlord stated that the 1 Month Notice was served to the tenant by Canada Post Registered Mail on December 22, 2015. The landlord has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenant confirmed that he received the notice of hearing package and the submitted documentary evidence in this fashion.

The landlord stated that prior to serving the tenant with the 1 Month Notice the tenant has been late paying rent on May 5, 2015, July 7, 2015 and again on October 9, 2015. The landlord stated that on each occasion the tenant failed to pay the additional rent increase amount of \$15.00 as noted in the submitted copy of the Notice of Rent Increase dated January 20, 2015 to be effective on May 1, 2015. The landlord stated that subsequent to each 10 Day Notice that was issued, letters dated May 12, 2015 July 7, 2015 and November 30, 2015 regarding outstanding rent was given to the tenant. The landlord also relies upon submitted a copy of the ``Tenant Ledger`` which confirms the landlord`s claims.

The tenant stated that he was not sure about the landlord`s claims, but stated that payment of rent was made directly from the ministry to the landlord. The tenant stated that he was unsure if he had contacted the ministry to address the rent issues.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Based upon the undisputed testimony of both parties I find that the landlord has properly served the tenant with the 1 Month Notice dated December 11, 2015 by Canada Post Registered Mail. The tenant is deemed to have been served 5 days later

as per section 90 of the Act on December 16, 2015. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent.

The landlord provided undisputed affirmed evidence that the tenant was late paying the rent on May 5, 2015, July 7, 2015 and again on October 9, 2015. The landlord relied upon undisputed documentary evidence which consists of:

- Tenant Ledger.
- Notice of a Rental Increase dated January 20, 2015.
- Letter of Notice for Rental Increase dated January 15, 2015.
- 10 Day Notice(s) dated May 5, 2015, July 7, 2015 and October 9, 2015.
- Letter(s) regarding outstanding rent dated May 12, 2015, July 7, 2015 and November 26, 2015.

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline 38, Repeated Late Payments of Rent states,

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² 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...

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

On this basis, I find that the landlord has provided sufficient evidence to satisfy me that the tenant has been repeatedly late paying rent as shown by the submitted material. The tenant's claim that the rent was paid directly by the ministry is an excuse. Unfortunately the tenant bears the responsibility to resolve the shortfall of rent payments and upon being notified of the issue of lateness the duty to resolve it. The tenant confirmed in his direct testimony that he was served with the 10 Day Notice(s) and the subsequent letters for outstanding rent. The tenant failed to resolve the issue in a

timely manner. The tenant's application to cancel the 1 Month Notice dated December 11, 2015 is dismissed.

During the hearing the landlord made an oral request for an order of possession to enforce the 1 Month Notice dated December 11, 2015. The landlord requested that in the event the tenant's application was dismissed that the effective end of tenancy date be February 29, 2016 instead of the original dated as noted on the 1 Month Notice. As the tenant's application is dismissed and I find that the notice is valid, the landlord's request for an order of possession is granted for February 29, 2016.

As for the tenant's request for an order to suspend or set conditions on the landlord's right to enter the rental unit, I find that the tenant has failed to provide sufficient details on this issue. The tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord's oral request for an order of possession is granted.

The landlord is provided with a formal copy of an Order of Possession effective February 29, 2016, a copy of which must be served on the tenant as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 04, 2016

Residential Tenancy Branch

