



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated June 30, 2016 (the “1 Month Notice”), and to recover the cost of the filing fee.

The tenant, an agent for the landlord (the “agent”), and the landlord attended the hearing which was held by teleconference. 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, to present affirmed oral testimony and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties agreed that a written tenancy agreement was signed by the parties. The parties confirmed that the tenancy agreement was not submitted in evidence. The parties agreed that a tenancy began on April 1, 2013. The parties disputed whether the tenancy began as a month to month tenancy versus a fixed term. There is no dispute; however, that at the time of the hearing, the tenancy was currently a month to month tenancy.

Monthly rent in the amount of \$950.00 is due on the first day of each month. The tenant paid a security deposit of \$475.00 at the start of the tenancy.

The tenant confirmed that she was served on June 30, 2016 with the 1 Month Notice alleging five causes. The tenant disputed the 1 Month Notice on July 4, 2016 which is within the 10 day timeline provided for under section 47 of the *Act*. The effective vacancy date listed on the 10 Day Notice is July 31, 2016. The agent testified that payment for “use and occupancy only” was accepted for August 2016.

The first cause indicated on the 1 Month Notice is that the tenant has been repeatedly late paying rent. The second cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The third cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord. The fourth cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk. The fifth and final cause indicated on the 1 Month Notice is that the tenant has caused extraordinary damaged to the unit or property.

Regarding the first cause, repeated late payment of rent, the tenant agreed with the landlord regarding the following payments of rent as follows:

MONTH	DATE RENT DUE BY TENANT	DATE RENT PAID BY TENANT
1. February 2015	Sunday February 1, 2015	Monday February 2, 2015
2. March 2015	Sunday March 1, 2015	Monday March 2, 2015
3. July 2015	Wednesday July 1, 2015	Thursday July 2, 2015
4. November 2015	Sunday November 1, 2015	Monday November 2, 2015
5. January 2016	Friday January 1, 2016	Monday January 4, 2016
6. May 2016	Sunday May 1, 2016	Monday May 1, 2016
7. July 2016	Sunday July 1, 2016	Monday July 2, 2016
8. August 2016	Monday August 1, 2016	Tuesday August 2, 2016

The tenant testified that she was only late due to her bank not processing e-transfers on holidays and non-business days, and that the landlord refused to accept cash payments. The tenant confirmed during the hearing that in July 2015 that she must have been late taking cash out for the landlord as July 1, 2015 fell on a Wednesday.

The agent testified that the landlord’s bank TD Canada Trust is open seven days per week included Sundays and that the tenant had a void cheque from the landlord so that the landlord could have made a cash deposit direct to the landlord’s account on the date the rent was due regardless of the day of the week, which was undisputed by the

tenant. In addition, the landlord submitted documentary evidence from the internet which supports that e-transfer payments can be made 24 hours per day, 7 days per week, and every day of the year electronically.

Analysis

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

1 Month Notice to End Tenancy for Cause – Although the tenant provided her version of why the monthly rent was late for the dates described above, I find the tenant has provided insufficient evidence to support that the reasons are justified under the *Act*. Section 26 of the *Act* requires that monthly rent be paid by the tenant on the date that it is due. Furthermore, Residential Tenancy Branch Policy Guideline #38 “Repeated Late Payment of Rent” (the “policy guideline”) states that:

“...Three late payments are the minimum number sufficient to justify a notice under these provisions”

[reproduced as written]

In addition, the policy guideline also states that:

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

[reproduced as written]

In addition, I have considered that the tenant failed to provide supporting evidence from her bank/financial institution supporting indicating that e-transfer payments could not be processed on holidays and non-business days.

Given the above, I find the tenant has breached section 26 of the *Act* on at least eight occasions within the past 18 months and therefore, **I dismiss** the tenant’s application in full, **without leave to reapply. I uphold** the landlord’s 1 Month Notice which I find to be a valid 1 Month Notice that complies with section 52 of the *Act*.

As the tenant’s application has been dismissed, I find it is not necessary to consider the other causes listed on the 1 Month Notice. Section 55 of the *Act* 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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Based on the above, **I grant** the landlord an order of possession effective **August 31, 2016 at 1:00 p.m.**, as the landlord accepted payment for “use and occupancy only” from the tenant for the month of August 2016 and has not reinstated the tenancy.

Conclusion

The tenant’s application is dismissed.

The landlord has been granted an order of possession effective August 31, 2016 at 1:00 p.m. 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: August 17, 2016

Residential Tenancy Branch