



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on August 3, 2016 (the "Application").

The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 1 Month Notice to End Tenancy for Cause, dated July 19, 2016 (the "1 Month Notice"); and an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing on their own behalves. All parties giving evidence provided their solemn affirmation.

The Landlord testified that she served her evidence package on the Tenants via registered mail on August 25, 2016. The Tenants acknowledged receipt.

The Tenants' Notice of a Dispute Resolution Hearing and documentary evidence was served on the Landlord by registered mail on August 8, 2016. The Landlord acknowledged receipt.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

Background and Evidence

The parties agreed the Tenants currently rent the unit on a month-to-month basis. Rent in the amount of \$1,700.00 per month is due on the first day of each month. At the beginning of the tenancy, the Tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00.

The Landlord testified that the Tenants are repeatedly late paying rent. Accordingly, she wishes to end the tenancy. In support, the Landlord has submitted e-Transfer statements from 2015 and 2016 showing the date payments were made. These statements confirm the Tenant was late paying rent every month from January 2014 to August 2016.

Although the Landlord agreed rent is paid up-to-date, she testified that the repeated late payments have made it difficult to fulfill her own financial obligations and have caused her to incur charges and fees.

As a result, the Landlord issued the 1 Month Notice, which had an effective date of August 31, 2016. The Landlord's stated she served the 1 Month Notice on the Tenants by courier on July 25, 2016. In an email to the Tenant, dated July 25, 2016, submitted with the Tenants' documentary evidence, the Landlord writes: "I received receipt from [the courier] indicating you received the notice on July 25, 2016" [Reproduced as written]. The Tenants acknowledged receipt.

M.E. gave oral testimony in reply on behalf of both Tenants. She stated that rent has been paid on time since March 2016. M.E. also testified that the Tenants' banking system allows a maximum payment of \$1,000.00 per e-Transfer.

In addition, M.E. testified that rent cannot be paid in advance because she does not get paid until the first of the month, but that she sends the full rent payment as soon as she has the money in her account. She also questioned the Landlord's reasons for ending the tenancy, suggesting the Landlord wishes to sell the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 47(b) of the *Act* permits a landlord to end a tenancy when the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline 38 provides clarification with respect to ending a tenancy on the basis of repeated late payments of rent. It states:

“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 a result of any of the late payments is not a relevant factor in the operation of this provision.”

In this case, the parties agreed, and I find, that rent is due on the first day of each month. However, the Landlord has adduced documentary evidence, which I accept, confirming the Tenants were late paying rent every month from January 2014 to August 2016. The documentary evidence contradicts M.E.’s oral testimony that rent has been paid on time since March 2016.

Accordingly, the Tenants’ Application is dismissed and the 1 Month Notice is upheld.

When a tenant’s application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the 1 Month Notice, a copy of which was provided with the Tenants’ documentary evidence, I find it complies

with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

As the Tenants have not been successful, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' Application is dismissed and the 1 Month Notice is upheld.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after being served on the Tenants. The order of possession may be filed in 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: September 23, 2016

Residential Tenancy Branch