



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on December 26, 2016 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of documents supplied by the other, within the required time limit.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on December 26, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on January 31, 2017.

The reason stated for the Notice to End Tenancy was that the tenant has been repeatedly late paying rent.

A copy of the tenancy agreement was supplied as evidence. Rent in the sum of \$1,300.00 is due on the first day of each month. The landlord does not reside in the community where the rental unit is located.

The landlord said that they expected rent to be paid by cheque, mailed to the landlords' address provided on the tenancy agreement.

In May 2016 rent was paid in cash, on time. The landlord was at the property.

On June 3, 2016 the landlord called the tenant as rent had not been paid. The landlord told the tenant they need payment on the first day of the month, to cover the mortgage. The tenants' brother made an e-transfer payment on June 8, 2016.

The tenant confirmed the payment made in June, as set out by the landlord, is correct.

On July 2, 2016 the landlord called the tenant as rent had not been paid. The tenant said he was trying to get the payment. On July 11, 2016 an e-transfer was made in the sum of \$975.00 by the tenants' brother. The landlord contacted the tenant to ask about the balance of \$325.00. The tenant had wanted to apply the security deposit, paid the previous month, toward rent. The landlord had already issued a receipt for the deposit and did not wish to apply a portion of the deposit to rent owed.

The tenant confirmed that the payment made in July, as set out by the landlord, is correct.

On August 3, 2016 the landlord called the tenant as rent had not been paid. The rent was paid on August 19, 2016. The tenant kept saying he would obtain cheques, or that he was having trouble obtaining cheques. The landlord told the tenant they would be at the property on August 19, 2016 and he could pay then, which he did. The tenant was reminded he continued to owe \$325.00.

The tenant has no recollection of the details of the payment made in August. The tenant said he was giving his brother money and believed his brother was making payments on time. The tenants' brother was a guest, for a period of time. The tenants' brother did not sign a tenancy agreement and was assisting with the rent.

On September 6, 2016 the landlord called the tenant as rent had not been paid. The landlord had been away so had not called earlier. The tenant said he thought his brother had paid the rent. The tenants' brother then sent a text to the landlord and on September 8, 2016 the rent was paid. On September 11, 2016 the balance owed from July 2016 was paid.

The tenant confirmed that the payment made in September, as set out by the landlord, is correct.

October 2016 rent was paid on time.

On November 4, 2016 the landlord called the tenant as rent had not been paid. The tenant said he would get back to the landlord, but he did not. The landlord called the tenant on November 9, 2016 and the tenant said he had a bank draft he would put in the mail. The draft did not arrive. The landlords' son was given the draft on November 21, 2016 when he was visiting in the community.

The tenant confirmed that the payment made in November, as set out by the landlord, is correct.

On November 25, 2016 the landlord called the tenant to say they would be at the unit on December 2, 2016 and rent could be paid then. The plans changed and on November 29, 2016 the landlord left the tenant a message that they would be at the unit on December 10, 2016 and asked the tenant to contact them. The rent was paid on December 10, 2016.

The tenant said that he paid the rent on December 10, 2016, on the request of the landlord.

The landlord decided to issue the Notice as they did not want to deal with consistent late payments.

The landlord received post-dated cheques and the January 2017 payment was returned as NSF. An electronic payment was then made on January 3, 2017. The tenant has since told the landlord that the account on which the cheques were issued has been closed. This was not disputed by the tenant.

The tenant said there were some discrepancies in the landlords' account. The tenant said the landlord only called him on several occasions to ask about rent. The tenant said that in December 2016 he believed he had reached an agreement that he would pay interest on the overdue mortgage. The tenant said he tried to use electronic transfer but it would not work for him. Then the tenant had problems with his chequing account.

It was explained to the tenant that despite any banking issues he might experience, that rent must be paid on the day set out in the tenancy agreement.

The landlord replied that she rejected the offer of interest payments as unworkable. The landlord said they just wanted the rent paid on time.

The landlord supplied copies of phone bills showing multiple telephone calls made to the tenant during the tenancy. Copies of receipts and proof of rent payments was supplied as evidence.

The landlord submitted copies of text messages sent in September regarding overdue rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due. From the evidence before me I find that rent was due on the first day of each month, as set out in the tenancy agreement.

The landlord has issued a one month Notice to end tenancy for cause, based on section 47(1)b); the tenant is repeatedly late paying rent.

Residential Tenancy Branch policy suggest that three late payments are the minimum to justify ending a tenancy. The late payments do not need not be consecutive, but if they are made over a long duration an arbitrator may find the rent was not repeatedly late.

From the evidence before me I find that the tenant paid the rent late in June, July, August, September and November 2016. The fact that the tenant does not have cheques fails to support the late payments or protect the tenant from the landlord enforcing their right to end the tenancy based on late payment. While the tenant made efforts to pay the rent; it was not paid on time and as provided by the terms of the tenancy agreement signed by the parties.

Therefore, I find on the balance of probabilities that rent has been repeatedly paid late for five out of the eight months, from May 2016 to December 26, 2016. During the tenancy late payments have been made more often than payments made on time.

As a result I find that the tenants' application is dismissed as the tenant has repeatedly paid rent late.

Therefore, I find that the tenancy ended on the effective date of the Notice, January 31, 2017.

Section 55(1) of the Act provides:

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.

As the application is dismissed and the Notice is in the approved form, I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The application is dismissed.

The landlord is entitled to an order of possession.

This decision is final and binding 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: February 01, 2017

Residential Tenancy Branch