



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, OPC, MNR, FF
 Tenants: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenants seek to cancel a notice to end tenancy. The landlords seek an order of possession for unpaid rent and for cause and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and one tenant. The tenant had arranged to call a witness into the hearing but she did not ask to have the witness provide any testimony. The witness had submitted a written statement.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on November 13, 2010 for a 1 year fixed term tenancy beginning on December 1, 2010 for the monthly rent of \$1,300.00 due on the 1st of each month and a security deposit of \$650.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 6, 2011 with an effective vacancy date of August 16, 2011 due to \$1,300.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of August 2011 and that the tenants were served the 10 Day

Notice to End Tenancy for Unpaid Rent by putting it in the rental unit mailbox on August 6, 2011 at 5:49 p.m. and that this service was witnessed by a third party.

The tenant testified that she did not receive a 10 Day Notice to End Tenancy for Unpaid Rent on August 6, 2011 but did receive another 1 Month Notice to End Tenancy for Cause on that date. The landlord testified the two notices were placed together in the tenants' mailbox at the same time.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenant's submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated July 16, 2011 with an effective vacancy date of August 16, 2011 citing the tenants are repeatedly late paying rent.

The tenant testified that on at least 3 or 4 occasions that they paid rent late they would send the landlord an email prior to the due date and let them know and would receive the landlord's ok to pay the rent late. The tenants provided no documentary evidence of any such emails. The tenant also testified that there were other occasions that they did not contact the landlord prior to the due date.

The landlords testified that they never received any requests from the tenants regarding the late payment of rent. However, the landlords provided copies of several emails showing the landlord initiated emails attempting to find out when rent was going to be paid and to inform the tenants that rent was required to be paid on the 1st of each month.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with a 10 Day Notice to End Tenancy for Unpaid Rent as declared by the landlord. As the tenant's have provided no documentary evidence, including any emails, that she states they have, related to the payment of rent, I find the tenant's testimony to be unreliable on all matters in this hearing.

This notice is deemed to have been received by the tenants on August 9, 2011 and the effective date of the notice is amended to August 19, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of that Notice.

As, I have found that the tenants have accepted the end of the tenancy based the 10 Day Notice to End Tenancy, I find the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause to be moot and dismiss their Application in its entirety. However, I find it clear that the landlord has also established Cause to end the tenancy in accordance with Section 47 of the *Act*, repeated late payment of rent.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,350.00** comprised of \$1,300.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 24, 2011.

Residential Tenancy Branch