



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, MNSD, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; for an order to suspend or set conditions on the landlord's right to enter the rental unit; and for a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the two agents for the landlord.

At the outset of the hearing I noted the tenants had applied to cancel a Notice to End Tenancy for Cause but that the landlord had only issued a Notice to End Tenancy for Unpaid Rent. As it was clear from both the rest of the Application that the tenants were disputing a Notice to End Tenancy for Unpaid Rent, I find the landlord would not be prejudiced to amend the Application to cancel a Notice to End Tenancy for Unpaid Rent. I amend the Application as such.

During the hearing the landlord's agent requested an order of possession.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order to suspend or set conditions on the landlord's right to enter the rental unit; to a monetary order for the return of November 2011 rent; and for all or part of the security deposit, pursuant to Sections 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the landlord is entitled to an order of possession, pursuant to Section 55 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 January 19, 2011 for a 1 year fixed term tenancy beginning on February 1, 2011 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 8, 2011 with an effective vacancy date of November 21, 2011 due to \$1,000.00 in unpaid rent.

The landlord's agent testified that she had received notice from the tenants that because one of the tenants was out of town at the time November 2011 rent was due the tenants would be late in paying it. The parties agree the landlord had agreed to have the tenants bring the rent in cash to the landlord's home on November 6, 2011.

The tenants assert they went to the landlord's home on November 7, 2011 in the evening and when the landlord's agent did not answer the door they left the rent in an envelope in the front door and went straight home after that. The tenants confirmed that they did not follow up with the landlord to ensure that the landlord had received the envelope of cash.

On November 8, 2011 tenant KH provided an email to the landlord's agent stating they had left the payment in the door jamb of the house the day before. The landlord's agent responded to tenant KH on November 8, 2011 at 2:43 p.m. stating she and her husband had been home all day and did not hear the tenants or find any envelopes; she further asked the tenant to come over and show her where the tenant had left the money.

The landlord's agent testified the tenant did not respond. However, the tenants submitted into evidence an email dated November 8, 2011 at 8:05 p.m. stating where they had left the money and at what address and described the door.

During the hearing the tenant noted that in the landlord's evidence there is an email dated November 9, 2011 that was sent from the landlord's agent to herself and cc'd to the other landlord's agent and that it was not sent to the tenants. This email also requested the tenant come to the landlord's house to show her where she left the money.

The parties agree that earlier in the tenancy, June 2011 a similar situation occurred where the tenants had to provide a cash payment to the landlord's agent at her home on a day after rent was due. The landlord asserts that on that occasion the tenants called ahead to make sure she was there and that they handed the rent to her. The tenants testified that they thought they had left it in the door but they could not remember, for sure.

The landlord's agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent Proof of Service document stating that she served the tenants with the 10 Day Notice on November 8, 2011 at 2:24 p.m. by sliding it through the door frame and door and that this service was witnessed by her colleague.

The tenants testified that the landlord's agent actually opened the door and entered into the rental unit. Tenant KH testified that she did not see the landlord but she did hear

someone trying to enter the unit. Tenant TF testified that she saw the landlord's agent closing the door.

In their written submission the tenants stated a few minutes later the agent slid an envelope under the door. In the hearing the tenants suggested there was no way the landlord could have slid the notice between the door and the door jamb.

The landlord's agent testified that she did not have a set of keys for the rental nor did the strata building manager and that the only keys to the unit were in the possession of the tenants.

Analysis

In relation to the portion of the tenants' Application seeking a monetary order for the return of the security deposit, I advised the tenants during the hearing that as the tenancy had not yet ended, this portion of their Application was premature and I dismiss this portion of the Application.

In relation to the portion of the tenants' Application seeking return of rent for the month of November 2011, I advised the tenants that regardless of the outcome of this hearing, as they had possession of the rental unit for the month of November 2011 they would not be entitled to a refund of that rent.

Further, I advised the tenants that part of this decision would determine whether or not the tenants have provided sufficient evidence to establish that they had paid rent for the month of November 2011. For these reasons, I dismiss this portion of the tenants' Application.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. I accept the parties entered into a verbal agreement that would allow the tenants to provide rent late by making payment in cash to the landlord's agent at her home.

However, I find the tenant's have failed to establish that they had in the past or by the landlord's instruction been told to leave the cash in an envelope at the front door. Nothing in the emails submitted by either party implies or states the tenants should just leave \$1,000.00 cash in any unsecured locations.

Where one party makes a claim that an event occurred and the other party disputes it, the burden of proof is on the party making the claim. Based on the testimony of both parties, I find the landlord's agent attempted, several times, to have the tenants discuss with her the circumstances around the payment of rent for November 2011 and that the tenants failed to provide any response.

In addition, even after the landlord's agent issued the 10 Day Notice to End Tenancy for Unpaid Rent, I find the tenants failed to contact the landlord and resolve these matters. I note that the tenants concerns in correspondence with the landlord on or after November 8, 2011 are primarily focused on how the landlord served the notice as opposed to trying to resolve the issue of unpaid rent.

For these reasons I favour the landlord's agent's testimony and find, based on the balance of probabilities, that it is unlikely the tenants would have left \$1,000.00 in cash in an envelope in someone's front door, without some type of follow up with the landlord's agent.

Further, by their actions after the agent had identified to them that she had not received their rent and after the 10 Day Notice was issued, I find the tenants have failed to establish that a rental payment was made to the landlord. I therefore find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord to be effective.

As I have found the notice is effective and the tenancy has ended, I make no findings and issue no orders in relation to the restricting the landlord's access to the rental unit, I dismiss this portion of the tenants' Application.

Conclusion

I find the landlord is entitled to an order of possession, in accordance with Section 55 of the *Act*, 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.

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: November 30, 2011.

Residential Tenancy Branch