



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2012 and to cancel a One Month Notice to End Tenancy for Cause dated [July] 29, 2012.

At the beginning of the hearing, the Landlord said she received a telephone call just prior to the hearing from the Tenants who said they would vacate the rental unit no later than July 27, 2012. The Landlord said this was not acceptable to her because she needs vacant possession of the rental unit to use as her own residence immediately. The oral hearing by teleconference call started at 1:00 p.m. as scheduled, however by 1:10 p.m. the Tenants-Applicants had not dialled into the conference call and as a result, the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in September 2011. The Landlord said the Tenants pay \$400.00 each month for pad rent to the manufactured home park however the lease for the same is still in her name. The Landlord said the Tenants also pay rent to her of \$300.00 each month for the manufactured home located on the pad site. Rent is due in advance on the 1st day of each month.

The Landlord said the Tenants had rent arrears for the manufactured home of \$200.00 for February 2012, \$300.00 for March 2012 and they did not pay rent for June 2012. As a result, the Landlord said she served the Tenants in person on June 22, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2012. The Landlord said the Tenants have not paid the arrears shown on the 10 Day Notice and have not paid rent for the manufactured home or for the pad rent for July 2012.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that on June 22, 2012, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2012. Although the Tenants applied within the 5 days granted under s. 46(4) of the Act to cancel this Notice, they did not attend the hearing to give any evidence and I find on a balance of probabilities that there are rent arrears. In particular, I find based on the un-contradicted evidence of the Landlord that at a minimum there were rent arrears for the manufactured home for June 2012 of \$300.00 when the 10 Day Notice was served and that this amount has not been paid. Although the Landlord claimed the Tenants also had rent arrears for other months, it is not clear whether the Landlord agreed to the Tenants deducting amounts for repairs from that rent or not (and I make no finding in that regard).

As I have found that there are grounds for the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2012, the Tenants' application to cancel it is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. As the tenancy will be ending, it is unnecessary to deal with the One Month Notice to End Tenancy for Cause and the Tenants' application to cancel it is also dismissed without leave to reapply.

Given that the Tenants have abandoned their application without any notice, I also Order pursuant to s. 72 of the Act that the Tenants must pay to the Director the \$50.00 filing fee that was waived for this proceeding.

Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants and may be enforced in 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: July 18, 2012.

Residential Tenancy Branch