



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tri-An Contracting Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OPL, OLC, ERP, RP, RR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent and Landlord's Use of the Property.

The tenants applied requesting repairs, emergency repairs, an order the landlord comply with the Act, rent reduction and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and 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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenants supplied a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on March 11, 2013. The application indicated a dispute in relation to unpaid rent. The tenants intended to dispute the Notice, but failed to indicate this on the check-list portion of the application. Therefore, I considered the tenant's application in relation to the cancellation of the 10 Day Notice.

The tenants indicated that they did not apply to cancel either of the 2 Month Notices to End Tenancy, which have been issued since January 2013.

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding was the 10 Day Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with

together. Therefore, I dealt with the tenant's request to set aside or cancel the 10 Day Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the Notice to End tenancy be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties agreed that the male tenant has lived in the rental unit for over ten years; the landlord has not owned the property for that whole time.

The parties also agreed that rent is \$400.00 per month, due on the first day of each month. In October 2012 the female tenant moved into the rental unit; there was no dispute that she is a co-tenant as she has made at least 1 partial rent payment to the landlord.

The tenants confirmed that on March 11, 2013 the male tenant received a 10 day Notice to End Tenancy for Unpaid Rent that was issued on March 11, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending effective March 21, 2013 and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants did apply to dispute the Notice. They did not supply evidence that they had made emergency repairs equivalent to rent owed. The tenants confirmed that they do not have an Order allowing them to make rent reductions.

The tenants confirmed that rent has not been paid since January 2013.

The landlord applied requesting an Order of possession.

Analysis

Based on the acknowledgement of the tenants I find that they were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on March 21, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants applied to dispute the Notice but did not pay the rent, did not have an Order allowing them to withhold rent and did not provide evidence of any emergency repairs having been made equivalent to the sum owed for rent, in accordance with section 33 of the Act.

Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice, March 21, 2013. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord has been granted an Order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant's application for rent reduction is dismissed with leave to reapply.

As the tenancy is ending there is no basis for an application by the tenants for repair to the unit.

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: April 16, 2013

Residential Tenancy Branch

