



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: MNDS, OPR, OPL, MNR, MNDC, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act").

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The landlord applied for an order of possession for the rental unit due to unpaid rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and due to another use of the property by the landlord pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "2 Month Notice") , a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

At the beginning of the hearing, neither party raised any issue regarding the service of the other's application or evidence.

The parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

Is the landlord entitled to an order of possession for the rental unit, to authority to retain the tenants' security deposit and further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The evidence taken at the hearing was that this tenancy began on July 15, 2013, monthly rent is \$700, payable on the first day of the month, and the tenants paid a security deposit of \$350 at the beginning of the tenancy.

Pursuant to the Rules, the landlord was questioned first about the Notices to end the tenancy.

The landlord stated that the tenants were served with a 2 Month Notice on June 28, 2014, via personal service to the tenant attending the hearing. The effective move-out date listed on the Notice was August 31, 2014.

The landlord submitted further that he served the tenants a 10 Day Notice by personal delivery to the tenant attending the hearing on September 2, 2014, listing unpaid rent of \$700 owed as of September 1, 2014. The effective move-out date listed was September 11, 2014. The tenants filed their application to dispute the Notice on September 8, 2014, which was within the timeframe given on the Notice as the 5th day was on a non-business day.

The landlord asserted that since the issuance of the Notice, he has not received any rent payments from the tenants and is now claiming for unpaid rent for August, September, and October 2014, for \$2100. I must note that the landlord also submitted a monetary claim for unpaid rent of \$700 for the month of November 2014.

In response to my question, the landlord acknowledged that the tenants would be entitled to compensation equal to a month's rent for having received the 2 Month Notice, but as the tenants never vacated the rental unit by the effective move-out date, they were not entitled to the 1 month's compensation and were obligated for all outstanding rent payments through the date of the hearing.

The landlord's documentary evidence was a copy of the 2 Month Notice and the 10 Day Notice.

Tenant's response-

The tenant claimed that they were entitled to compensation of 1 month's rent, due to the 2 Month Notice being given to them, agreed that rent for September and October had not been paid, and that they owed the landlord rent for 1 ½ months, as the landlord should use their security deposit of \$350 in partial satisfaction of the 2 months' rent being owed.

Analysis

Landlord's Application:

Section 51 of the Act provides that a tenant who receives a 2 Month Notice for the landlord's other use of the property, as was the case here, is entitled to receive from the landlord, on or before the effective date of the Notice, here, August 31, 2014, the equivalent of one month's rent.

In considering whether the tenants here are entitled to receive this compensation, I find the 2 Month Notice was waived by the actions of the parties. In making this determination, I considered that the tenants were required to move out by August 31, 2014, and failed to do so, as they continue to reside in the rental unit through at least the day of the hearing, and thus created a new tenancy. I also considered that the landlord, rather than immediately file an application to enforce the 2 Month Notice, served the tenants a 10 Day Notice for unpaid rent for September on September 2, 2014, and thus created a new tenancy.

As I find that the actions of the parties impliedly waived the 2 Month Notice, I find the tenants are not entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As I have found that the actions of the parties show that a new tenancy was created, I find that the tenants owed rent for September 2014 as declared on the 10 Day Notice.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within business five days; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient evidence, along with the tenant's confirmation, that the tenants owed the landlord rent when the Notice was issued and that they did not pay within five days of receiving the Notice.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

As to the landlord's monetary claim, as I have determined that the 2 Month Notice issued by the landlord was waived by the actions of the parties, I find that the tenants are not entitled to compensation under this Notice. I therefore find the landlord has demonstrated that the tenants owed rent for August, September, and October 2014, and that the landlord is entitled to a monetary award in the amount of \$2150, comprised of outstanding rent of \$700 each for August, September, and October 2014, and the \$50 filing fee paid by the landlord for this application.

I dismiss with leave to reapply the landlord's claim for unpaid rent for November 2014, as the same is not yet due and payable.

Tenants' application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

At the landlord's request, I direct him to retain the tenants' security deposit of \$350 in partial satisfaction of his monetary award of \$2150 and I grant the landlord a final,

legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1800, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants' application is dismissed.

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: October 28, 2014

Residential Tenancy Branch

