



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened to deal with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") and for recovery of the filing fee paid for this application.

The listed tenant and landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally, to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence 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.

Procedural matter-The tenant entered the conference 3 minutes late, and 14 minutes into the hearing, the tenant abruptly exited the telephone conference call hearing. The tenant, however, had fully testified as to the contents and issues surrounding the Notice prior to her departure, as will be more fully explained.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties was that this tenancy began on June 1, 2014, monthly rent is \$2000, and the tenant paid a security deposit of \$1000. The tenant specifically stated that the monthly rent was for “both” houses; however, the landlord disagreed.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord submitted that the tenants were served with a 10 Day Notice on September 23, 2014, by leaving it with the tenant, listing unpaid rent of \$6000 and unpaid utilities of \$400 as of August 1, 2014. The effective move-out date listed was October 3, 2014.

The landlord asserted that since the issuance of the Notice, the tenants have not made any rent payments and now owes rent for the months of September, October, and November 2014.

The landlord requested an order of possession for the rental unit.

In response, the tenant admitted that she has not paid the rent, due to the condition of the rental unit and to an agreement she had with the landlord for payments.

Analysis

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or dispute the Notice within five days. In this case, the tenants disputed the Notice by filing their application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent nor had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenants did not establish that they had the legal right to withhold the rent owed.

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

I therefore dismiss the tenants' application seeking cancellation of the Notice.

At the landlord's request, 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 tenant, pursuant to section 55(1) of the Act.

Conclusion

The tenants' application seeking cancellation of the 10 Day Notice is dismissed, without leave to reapply.

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.

The tenants are advised that costs of such enforcement are recoverable from the tenants.

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 13, 2014

Residential Tenancy Branch

