



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

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").

The listed parties 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 all parties were provided the opportunity to present their evidence orally up to a point, and 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.

Issue(s) to be Decided

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

Background and Evidence

Though no tenancy agreement was entered into evidence, the undisputed evidence of the parties was that this tenancy began on October 1, 2014, current monthly rent is \$700, due on the 1st day of the month, and the tenants paid a security deposit of \$350 on September 18, 2014.

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

The landlord stated that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on December 29, 2014, by leaving it with tenant CB, listing unpaid rent of \$700 as of December 1, 2014. The effective move-out date listed was January 8, 2015.

The landlord asserted that since the issuance of the Notice, the tenants have not made any rent payments and now owe rent for the month of January 2014.

In response, the tenants submitted that they did pay rent for December 2014 by direct deposit, but could not locate the bank receipt proving the payment. The tenants confirmed that rent for January 2015 has not been paid.

During the hearing, the landlord requested an order of possession for the rental unit.

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, as is the case here. 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, I find 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 or had some other legal right to withhold rent.

Upon hearing from the parties, I find the landlord submitted sufficient evidence to show that the tenants 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, and it 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.

Conclusion

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

The landlord is granted an order of possession for the rental 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: January 22, 2015

Residential Tenancy Branch

