



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 12, 2014 ('10 Day Notice'), pursuant to section 46.

Both tenants ("tenant EHT" and "tenant BJN") and the landlord attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's wife, SS, testified as a witness on behalf of the landlord at this hearing.

The landlord testified that the tenants were served with a 10 Day Notice on December 12 or 13, 2014, by way of posting to their rental unit door. The landlord's wife, SS, testified that she witnessed the posting on the evening of December 12, 2014. The tenant EHT confirmed receipt of the 10 Day Notice on December 13, 2014. The tenants provided a signed statement from a witness, "BV," that BV did not see a notice posted to the tenants' rental unit door on December 12, 2014 at 6:45 p.m., as he was visiting the tenants at their rental unit on that date. In accordance with sections 88 and 90 of the *Act*, I accept the tenants' evidence that they received the 10 Day Notice on December 13, 2014, given the signed witness statement, the testimony from the tenants, and the testimony from the landlord that he may have served it on December 13, 2014.

The tenant EHT testified that the landlord was personally served with the tenants' application for dispute resolution hearing package ("Application") on December 19, 2014. The tenant EHT indicated that "RP" witnessed this service. Despite attempts to reach him during the hearing, RP could not be contacted. The landlord confirmed receipt of the hearing notice only, not the written evidence package. The landlord stated that he received the notice in his mailbox, not via personal service. Initially, the

landlord confirmed receipt of the written evidence and then revised his testimony to state that he had not received the evidence. I find the tenants' evidence to be truthful and credible and I therefore accept their written evidence as part of their application and will consider it in making my decision. Accordingly, as per sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' notice and written evidence package.

During the hearing, the landlord made an oral request for an order of possession against the tenants.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that this tenancy began on December 1, 2014, but that the tenants moved in a few days prior to this date. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was due for this tenancy. The landlord testified that the tenants paid a security deposit of \$150.00 on November 30, 2014 and they were not given a receipt for this payment because they had not paid rent for December 2014. The landlord continues to retain this \$150.00 security deposit. The tenants continue to reside in the rental unit, which is the basement unit in the landlord's house. The landlords occupy the main floor unit of the house.

A written tenancy agreement does not exist for this tenancy. The landlord testified that he signed an "Intent to Rent" shelter information document ("ITR") on November 27, 2014, for the tenants to receive social assistance payments. The landlord testified that he did not receive a copy of this ITR from the tenants; however, the tenants claimed that they provided the landlord with this copy. The landlord agreed that the terms of the ITR outlined the terms of this tenancy; namely, the names and addresses of the parties are set out and that rent in the amount of \$800.00 is due for this tenancy.

The landlord's 10 Day Notice indicated that rent in the amount of \$1,050.00 was due on December 1, 2014, which represents \$800.00 for December 2014 rent and \$250.00 for the tenant's remaining security deposit owed. The landlord testified that the tenants did not pay rent for December 2014 or January 2015.

The tenants stated that they moved into the rental unit just prior to December 1, 2014, that they were not given any keys to the rental unit, that no move-in inspection was completed and they paid \$150.00 as a deposit to secure the rental unit. The tenants stated that they had an agreement with the landlord to pay rent three to five days after December 1, 2014, when it was due. The landlord testified that he agreed that the tenants could pay rent a couple of days late past December 1, 2014 but the tenants never paid. The tenants stated that they received a 10 Day Notice on December 13, 2014 and applied for dispute resolution on December 18, 2014, as they did not know what to do. The landlord stated that he allowed the tenants to reside in the rental unit but he did not provide them with keys to the rental unit because they had not paid any rent or the remainder of their security deposit.

Analysis

Section 26 of the Act requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act. The tenants did not provide any evidence that they were entitled to deduct any amounts from their rent.

The tenants agreed that they failed to pay the full rent for December 2014 within five days of receiving the 10 Day Notice on December 13, 2014. Although the tenants made an application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice, they did not provide a valid reason for not paying their rent. In accordance with section 46(5) of the Act, the failure of the tenants to pay rent within five days led to the end of this tenancy on December 23, 2014, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 23, 2014. As this has not occurred, I find that the landlord is entitled to an **Order of Possession effective at 1:00 p.m. on January 31, 2015.**

Accordingly, the tenants' application to cancel the landlord's 10 Day Notice, dated December 12, 2014, is dismissed without leave to reapply.

Conclusion

The tenants' application to cancel the landlord's 10 Day Notice, dated December 12, 2014, is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on January 31, 2015**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: January 20, 2015

Residential Tenancy Branch

