



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: CNR

Landlords' application: OPR; MNR

Introduction

This Hearing was convened to consider cross applications. The Tenants seek to cancel a Notice to End Tenancy for Unpaid rent issued February 15, 2015.

The Landlord seeks an Order of Possession for Unpaid Rent; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Tenants testified that they served the Landlord with their Notice of Hearing documents, but were not certain of the date. The Landlord acknowledged receipt of the Tenants' Notice of Hearing documents on March 5, 2015.

The Landlord testified that he served the female Tenant with his Notice of Hearing documents on March 17, 2015, at the rental property. The Tenants denied receiving the documents and stated that they did not know that the Landlord had also filed an Application for Dispute Resolution. The Landlord stated that he did not have any independent witness to confirm service.

I find that the Landlord did not provide sufficient proof of service of his Notice of Hearing documents, and therefore the Landlord's application was **dismissed with leave to reapply**. The Hearing continued with respect to the Tenants' Application only.

Issues to be Decided

- Should the Notice to End Tenancy issued February 15, 2015 (the "Notice") be cancelled?

Background and Evidence

The Tenants testified that they received the Notice on February 18, 2015. They acknowledged that rent is due on the first day of each month and that they are in arrears for February and March, 2015.

The Tenants stated that they ran into financial difficulties because their roommate did not pay his share of the rent. The Tenants seek to reach an agreement with the Landlord with respect to a payment schedule to catch up on the arrears.

The Landlord stated that he did not wish to enter into such an agreement with the Tenants. He requested an Order of Possession.

The Tenants stated that there were repairs that were required in the rental unit.

Analysis

Section 26 of the Act states:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenants did not have a right under the Act to deduct all or a portion of the rent. The Tenants made reference to required repairs. The Tenants may or may not have a valid claim for compensation or a rent reduction from the Landlord, but at the time that the rent was due on February 1, 2015, the Tenants had no right under the Act to deduct any of the rent. The Tenants' remedy would have been to file an Application for Dispute Resolution seeking an Order from the Director that they could deduct a portion of the rent for repairs, services or facilities agreed upon but not provided, or seek a Monetary Order for compensation for damage or loss. No such Application was filed.

I find that the Tenants did not pay rent when it was due, or within 5 days after receipt of the Notice. I find that the Tenants did not have a right under the Act to deduct any rent. **The Tenants' application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice. **I find that the tenancy ended on February 28, 2015**, which is 10 days after the Tenants received the Notice.

Section 55(1) of the Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession.

Conclusion

The Landlord's Application is **dismissed with leave to reapply**.

The Tenants' Application is **dismissed**.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 08, 2015

Residential Tenancy Branch

