



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR RR FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenants' request to set aside, or cancel the Landlords' Notice to End Tenancy issued for unpaid rent and I dismiss the balance of the Tenants' application with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on April 24, 2015 seeking to obtain an Order to cancel a Notice to end tenancy issued for unpaid rent and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlords' Agent (hereinafter referred to as Landlord) and one Tenant, L.C. Each party gave affirmed testimony. The Landlord affirmed that he was representing the two named Landlords listed on the Tenants' application and the Tenant affirmed that she was representing both herself and the other Tenant, G.C. Therefore, for the remainder of this decision, terms or references to the Landlords and the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however,

each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipts of the Tenants' application and argued that it was not received until approximately 10 days ago; therefore, they were not able to submit their documentary evidence until June 5, 2015. The Tenant testified that they had first served their application to the Landlords by registered mail and when that mail was returned they personally delivered the envelope containing their application for Dispute Resolution, evidence, and hearing documents to the Landlords on approximately May 29, 2015.

At the time of this hearing the Landlords' evidence had not been received on file. Given the circumstances presented during the hearing I find that there was no need to consider the Landlords' documentary evidence or written submissions.

Issue(s) to be Decided

1. Should the 10 Day Notice to end tenancy issued April 20, 2015 be upheld or cancelled?
2. If upheld, did the Landlord appear and request an Order of Possession?

Background and Evidence

The undisputed evidence was that the Landlords and Tenants entered into a month to month written tenancy agreement that began on October 21, 2006. Rent of \$1,500.00 was due on or before the first of each month and on October 21, 2006 the Tenants paid \$750.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay the \$3,577.50 outstanding rent owed they posted a 10 Day Notice to the Tenants door on April 20, 2015. The Landlord stated that it is their position that they would be willing to withdraw the 10 Day Notice if the Tenants are able to pay the rent owed within a couple of days. The Landlord submitted that if the Tenants are not able to pay the rent owed as requested they are asking that the 10 Day Notice be upheld and they be issued an Order of Possession.

The Tenant testified and confirmed that at the time the 10 Day Notice was issued they owed the Landlords \$3,577.50. She stated that since the 10 Day Notice was issued they made one more payment of \$787.50 on April 30, 2015. She acknowledged that no rent has been paid in May or June 2015 despite that they continue to reside in the rental unit.

The Tenant submitted that they do not have the money to pay the rental arrears at this time and would not have the full balance anytime in the near future. She asserted that since the beginning of their tenancy the Landlords informed them that they were not authorized to deduct money off of their rent for any repairs. She also stated that the Landlord made it very clear that if there was work to be done he would handle it and would conduct the work in a manner that he chose to do.

The Tenant argued that since the rental arrangement was coming to an end, and to be fair, there should be recognition for the money they spent performing work on the house. She spoke of maintenance and repair issues that occurred throughout their tenancy and argued that they chose to conduct repairs instead of waiting for the Landlords to take action. She confirmed that those repairs were referenced in her documentary evidence.

On a procedural note at 11:10 a.m. the Tenant disconnected from the hearing during my explanation that this matter would be determined in accordance with the Act. The Landlord remained on the line and requested that this Decision and Order of Possession be faxed to him.

Analysis

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord. In this case rent was payable on the first of each month in the amount of \$1,500.00.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was issued and served upon the Tenants in a manner that complies with the Act. Upon consideration of the undisputed evidence that rent has not been paid in accordance with section 26 of the Act, I find the Landlord had valid reasons for issuing the 10 Day Notice dated April 20, 2015. Accordingly I dismiss the Tenants' application, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord appeared at the hearing and made a request that the 10 Day Notice be upheld and an Order of Possession be issued. Accordingly, I grant the Landlord's request for an Order of Possession, pursuant to section 55 of the Act.

Conclusion

The Tenants' application has been dismissed, without leave to reapply.

The Landlords have been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the British Columbia Supreme Court 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: June 09, 2015

Residential Tenancy Branch

