



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FF

Introduction

The tenants applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and to recover the cost of the filing fee.

Tenant A.B., the landlord and the spouse of the landlord attended the hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

I find the parties were served with documentary evidence in accordance with the Rules of Procedure.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2015 be cancelled?
- Are the tenants entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

The parties agree that a month to month tenancy began on May 1, 2015. Monthly rent in the amount of \$1,250 is due on the first day of each month. The parties disputed the amount of the security deposit. The landlord stated that the tenants paid \$625 at the start of the tenancy, while the tenant stated that they paid \$650 and due to the landlord losing that money, they paid \$650 a second time. I make no finding regarding the

amount of the security deposit as there is no application before me regarding the security deposit.

The tenant testified that a 10 Day Notice dated August 4, 2015 was served personally on August 4, 2015 and that the tenants disputed the 10 Day Notice on August 6, 2015, which is within the required 5 day timeline under section 46 of the *Act*. According to the 10 Day Notice, \$1,250 was owed by August 1, 2015. The effective vacancy date on the 10 Day Notice is listed as August 10, 2015.

The tenant testified that rent for August and September of 2015 has not been paid because of a disagreement regarding compensation for work completed by the tenants. The landlord disputed that any work agreement was made in relation to rent owed. The tenant confirmed that no written agreement was ever made between the landlord and the tenants.

The landlord verbally requested an order of possession.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant testified that rent for August and September 2015 has not been paid as the tenant alleged that rent was not owed due to compensation for work they completed, which the landlord disputed. The landlord stated that no agreement for work in relation to rent was ever formed between the parties. The effective vacancy date on the 10 Day Notice is listed as August 10, 2015 which automatically corrects under the *Act* to August 14, 2015 as the tenants were served on August 4, 2015 with the 10 Day Notice. The tenants continue to occupy the rental unit.

Section 26 of the *Act* requires that the tenants pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenants have provided insufficient evidence that rent was paid as per the tenancy agreement. The landlord made a verbal request for an order of possession once the 10 Day Notice was upheld.

Pursuant to section 55 of the *Act*, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective two (2) days after service on the tenants.

I dismiss the tenants' application to cancel the 10 Day Notice as the tenants provided insufficient evidence that rent was paid as indicated on the 10 Day Notice.

The tenants are not granted the recovery of the filing fee as there application has been dismissed.

Conclusion

The tenants' application to cancel the 10 Day Notice dated August 4, 2015 is dismissed.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 8, 2015

Residential Tenancy Branch

