



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX KELOWNA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application.

The tenants, the landlords and an agent for the landlords attended the conference call hearing and gave sworn testimony. The tenants provided a copy of the 10 Day Notice in documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing.

Issue(s) to be Decided

Are the tenants entitled to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started as a fixed term tenancy for a year on September 01, 2005, thereafter reverting to a month to month tenancy. Currently rent for this unit is \$1,050.00 per month and is due biweekly each month.

The landlord testified that the tenants failed to pay rent for September, 2015 of \$1,050.00. The tenants were served with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) by posting it to their door on September 22, 2015. The landlord testified that the amount outstanding shown on the Notice of \$1,250.00 is an error and the amount should have read \$1,050.00. The Notice informed the tenants that they had five days to pay the rent or dispute the Notice or the tenancy would end on October 05, 2015. The landlord testified that the tenants did

not pay the rent owed and have also failed to pay rent for October and November, 2015. The total amount of outstanding rent is now \$3,150.00

The landlord orally requested at the hearing that the 10 Day Notice be upheld and an Order of Possession issued to be effective as soon as possible.

The tenant RH testified that they withheld the rent for September, October and November because the landlord would not provide the tenants with rent receipts for their payments made in cash. The landlord also said he had sold the house; however, the tenants were suspicious of this as no one had come to view the property.

The tenants seek to have the 10 Day Notice to End Tenancy set aside and seek to recover their \$50.00 filing fee from the landlord.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states:

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.

The tenants do not dispute that rent has not been paid for September, October and November, 2015. It is therefore my decision that the tenants have breached s. 26 of the *Act* and failed to pay rent to an amount of \$3,150.00. Consequently, I uphold the Notice and the tenants' application to cancel the Notice is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which 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.*

The landlord has orally requested an Order of Possession. Having upheld the Notice I will grant that Order. The effective date on the Notice in this matter was September 05, 2015. As that date has now passed, I grant the landlord an Order of Possession effective two days after service upon the tenants.

Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenants. This Order must be served on the tenants, if the tenants fail to comply with the Order, the Order may be filed in the 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: November 30, 2015

Residential Tenancy Branch

