



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kerry Knudsen and Royal Arcadia Apts
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR, NT, CNC, CNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to cancel a 10 day Notice to end tenancy issued on November 2, 2015, another 10 day Notice issued on December 2, 2015 and a one month Notice ending tenancy for cause issued on October 28, 2015.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the male tenant was not present. Toward the end of the hearing the female tenant said the male tenant had arrived; he did not provide testimony. Both tenants were served with Notice of this hearing via registered mail sent on December 22, 2015. The tenant confirmed service.

The tenants' witnesses were asked to remove themselves to an area where the tenant could not be heard. Those witnesses were not called to testify.

The landlord's witness was allowed to exit the hearing and was available, should he be needed to testify. This witness was not called to testify.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Should the 1 month Notice ending tenancy issued on October 28, 2015 be cancelled?

Should the 10 day Notices issued on November 2, 2015 and December 2, 2015 be cancelled?

Background and Evidence

The tenancy commenced on September 4, 2014, rent is \$1,000.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of \$400.00 that was carried forward from a previous tenancy. A copy of the tenancy agreement, signed by both tenants and the on-site manager, was supplied as evidence.

There was no dispute that the tenants received two 10 day Notices to end tenancy issued on November 2, 2015 and December 2, 2015; respectively. The tenant confirmed receipt of a one month Notice to end tenancy for cause, issued on October 28, 2015. The tenant confirmed receipt of the Notices on the day they were each issued. The tenants disputed the October 28, 2015 and November 2, 2015 Notices on November 30, 2015.

The tenants did not amend their application to dispute the December 2, 2015 10 day Notice to end tenancy.

The tenant said they applied to dispute the Notices outside of the required time limit as they were led to believe there was no issue with the rent; the landlord told them everything was fine. By November 30, 2015 the tenants understood the landlord wished to evict them and they applied to dispute the Notices.

The landlord supplied a copy of a mutual agreement to end tenancy signed by the male tenant and the landlord on October 28, 2015. The female tenant said that the tenants' signature was forged on that document. The landlord said that was not true and the tenancy was to have ended effective November 30, 2015. When the tenants failed to vacate the landlord issued another 10 day Notice to end tenancy on December 2, 2015.

The male tenant had a history of working for the landlord, cleaning carpets. Each month the landlord deducted \$200.00 from the rent owed, as payment to the tenant. The landlord ceased this relationship in October 2015 but gave the tenant a rent deduction in November 2015. In November the tenants owed \$800.00 and \$1,000.00 in each of December 2015 and January 2016.

On January 2, 2016 the landlord posted a third 10 day Notice to end tenancy for unpaid rent to the tenants' door.

A copy of all Notices was supplied as evidence.

The female tenant said she did not receive the January 2, 2016 10 day Notice. The landlord said that Notice was posted to the tenants' door on January 2, 2016.

The 10 day Notices indicated that the Notice would be automatically cancelled if the landlord received the rent due within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

There was no dispute that by December 21, 2015 the tenants paid \$722.50 toward the rent owed. A receipt for use and occupancy was issued to the tenants, indicating that a balance in the sum of \$1,077.50 was owed for rent. The receipt included a notation that the tenancy was not reinstated.

The tenant said that the landlord not only forged the male tenants' signature on the mutual agreement to end the tenancy, he contacted the government ministry that pays her share of the rent and told them the tenants were being evicted. The tenants were then not supplied with rent money and they could not pay the rent owed. The landlord has harassed the tenants and has caused the tenants to experience problems in paying the rent.

When asked why the tenants had not supplied evidence in support of their allegation of forgery and interference with their ability to pay rent, the tenant said she unfamiliar with the process of a hearing. When asked why rent had not been paid the tenant said that was due to the actions of the landlord; who was guilty of harassing the tenants.

The tenant said they did not apply to cancel the Notices within the required time limit as they were not familiar with the Notices and the landlord was telling them not to worry and that he was OK with them remaining in the unit.

The landlord said he initially thought the tenants would vacate based on the mutual agreement to end the tenancy.

The tenant agreed that the only rent paid since September 2015 was \$722.50.

Analysis

Based on the affirmed testimony of the tenant I find that the tenants received the Notices to end tenancy on the dates they confirmed receipt. Confirmation of receipt by the party who received the document is undeniable.

The tenants did not apply to cancel two of the Notices (October 28, 2015, November 2, 2015) until November 30, 2015. The tenants did not dispute the December 2, 2015 Notice to end tenancy.

The tenants had 10 days to apply to cancel the 1 month Notice to end tenancy for cause. The tenants had five days to either pay the rent or apply to cancel the 10 day Notices to end tenancy.

The dates by which the tenants were required to submit their applications were November 9, 2015 (the October 28, 2015 Notice); November 7, 2015 (the November 2, 2015 Notice) and December 7, 2015 (the December 2, 2015 Notice.).

The tenant confirmed that the only rent paid since October 2015 was \$722.50.

I have considered the tenant's submission that they did not believe the landlord would enforce the Notices to end tenancy and find, on the balance of probabilities, that this was an assumption made by the tenants. Even if the landlord had been relying on the mutual agreement to end tenancy and had not aggressively pursued the payment of rent; the tenants were required, no later than November 7, 2015 and December 7, 2015 to dispute the Notices or pay the rent. They did not make any payments or diligently pursue an application within the required time limit. Further, the tenants did not dispute the December 2, 2015 10 day Notice to end tenancy.

I have considered section 66 of the Act, which provides:

Director's orders: changing time limits

- 66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*
- (2) *Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:*
- (a) the extension is agreed to by the landlord;*
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.*
- (3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

I find that there was no exceptional circumstance that would have allowed the tenants to believe rent was not due. Once the tenants received the Notices to end tenancy for unpaid rent they were required to either pay the rent or to submit a timely application with evidence the rent had been paid or applied to emergency repairs. The landlord's repeated Notices to end tenancy were adequate notice that payment was required.

Therefore, I find that the tenants have failed to prove that any exceptional circumstance existed in relation any of the Notices to end tenancy. If there was any confusion in November, by December the tenants had been provided ample Notice that rent must be paid and of their right to dispute that Notice within the required time limit.

The December 2, 2015 Notice was issued after the mutual agreement to end the tenancy vacancy date had passed. I find that the landlord's actions were clear; that he wanted the rent paid or the tenants must vacate.

Therefore, I find that the tenants failed to dispute any of the Notices to end tenancy within the time limit required. As there are not exceptional circumstances that would support a late application I dismiss the request for more time to dispute the Notices.

I will focus on the November 2, 2015, 10 day Notice to end tenancy for unpaid rent.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants confirmed receipt of the Notice on November 2, 2015, I find that the earliest effective date of the Notice was November 12, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on November 12, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I determined that the tenants did not apply to the dispute this Notice within the required time limit and that no exceptional circumstance barred the tenants from making an application with the required time limit.

Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; November 12, 2015.

Of the \$2,800.00 in rent and per diem rent owed from November 2015 to January 2016 the tenants have paid \$722.50.

In the absence of evidence to the contrary, I find that the tenants have not paid rent to November 12, 2015 and per diem rent from November 13, 2015 to January 31, 2016 in

the amount of \$2,077.50 and that the landlord is entitled to compensation in that amount. The landlord is entitled to per diem rent to the end of January 2016 as it is unlikely possession of the unit will be obtained prior to that date.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the 50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,127.50. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord is holding the security deposit which must be disbursed in accordance with the legislation.

The tenant's application is dismissed.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

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: January 25, 2016

Residential Tenancy Branch

