



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNR RR FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 2, 2016 (the "Application").

The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 22, 2016 (the "10 Day Notice"); a monetary order for the cost of emergency repairs; an order permitting the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; an order permitting recovery of the filing fee; and other unspecified relief.

Both Tenants were represented at the hearing by R.A. The Landlord attended the hearing on his own behalf, assisted by his son, O.C. The parties giving evidence provided their solemn affirmations.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed the Landlord did not provide the Tenants with a copy of the documentary evidence upon which he intended to rely. The Tenants did provide the Landlord with a copy of the evidence upon which they intended to rely. However, for the reasons below, I have not found it necessary to consider the

Landlord's documentary evidence. Rather, the Tenants' documentary evidence and the oral testimony provided by both parties have been sufficient to determine this matter.

In addition, Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenants' Application was whether or not the tenancy continues. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' application to cancel the 10 Day Notice and their entitlement to recover the filing fee, with leave to reapply at a later date.

Issue to be Decided

Should the 10 Day Notice be cancelled?

Is the Landlord entitled to an order of possession?

Are the Tenants entitled to recover the filing fee paid to bring the Application from the Landlord?

Background and Evidence

The Landlord confirmed the tenancy began on October 1, 2015. Rent in the amount of \$1,750.00 is due on the first of each month. The Tenants did not dispute these terms of the tenancy agreement.

The Landlord gave oral testimony that the 10 Day Notice was served by registered mail on April 22, 2016. The Landlord provided a Canada Post tracking number which confirmed the 10 Day Notice was delivered on April 25, 2016. I am satisfied the Tenant was duly served with the 10 Day Notice on April 25, 2016.

The Landlord further confirmed that rent has not been paid for the months of April and May 2016. The Tenants did not disagree, and referred to repairs that they allege need to be done in the rental unit.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the Act requires tenants to pay rent when due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right to deduct all or a portion of the rent.

The Tenants have not provided me with sufficient evidence to confirm they had a right to deduct all or a portion of the rent.

Section 46 of the Act permits a Landlord to end a tenancy if rent remains unpaid on any day after the day it is due. In order to be effective, a notice to end tenancy must comply with section 52 of the Act.

The 10 Day Notice, included in the Tenants' evidence package, is in writing; is signed and dated by the Landlord; provides the address of the rental unit; states the effective date of the notice; states the grounds for ending the tenancy; and is in the approved form. Accordingly, I find the 10 Day Notice complies with section 52 of the Act.

I find the Tenants have not paid pay rent when due for the months of April and May 2016. They have provided insufficient evidence to satisfy me they had a basis for not paying rent to the Landlord. Accordingly, the Tenants' application to cancel the 10 Day Notice is dismissed.

Section 55 of the Act requires that I grant an order of possession to a landlord when a tenant's application for dispute resolution is dismissed and the notice complies with section 52 of the Act.

As I have dismissed the Tenants' Application and determined the 10 Day Notice complies with section 52 of the Act, I grant the Landlord an order of possession. The order of possession will be effective two days after service on the Tenants. Should the Tenants fail to comply with the order of possession, it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants have not been successful. Accordingly, I decline to grant a monetary order for recovery of the filing fee.

Conclusion

The Tenants' application to cancel the 10 Day Notice is dismissed.

I grant an order of possession to the Landlord, which will be effective two (2) days after service on the Tenants. Should the Tenants fail to comply with the order of possession, it may be filed in and enforced as an Order of the Supreme Court of British Columbia.

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 01, 2016

Residential Tenancy Branch