



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties agreed that the tenants served the landlord with the notice of a dispute resolution hearing package via Canada Post Registered Mail on June 8, 2016. As such, I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served as per section 89 of the Act. The landlord is deemed to have been served 5 days later as per section 90 of the Act.

The tenants stated that the landlord was served with their submitted documentary evidence by courier on July 2, 2016. The landlord confirmed receipt of the tenants' submitted documentary evidence on July 11, 2016. The landlord provided testimony that although he received the tenants' documentary evidence just two days prior to the hearing that there were no issues in proceeding with the hearing. The landlord stated that he did not serve his documentary evidence to the tenant. The tenant confirmed that no documentary evidence was received from the landlord for this hearing. I accept the undisputed affirmed evidence of both parties and find that the tenants have properly served the landlord with the submitted documentary evidence. The tenants have properly served the landlord as per section 88 of the Act. I also find based upon the landlord's testimony that the landlord has failed to serve the tenants with the submitted documentary evidence as per section 88 of the Act. As such, the landlord's documentary evidence shall be excluded and not considered for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties have not provided a copy of the 10 Day Notice. However, both parties have agreed that the landlord served the tenants with a 10Day Notice dated June 2, 2016 by Canada Post Registered Mail on June 3, 2016. The tenants both confirmed that the 10 Day Notice was received by Canada Post on June 7, 2016. The 10 Day Notice states that the tenants failed to pay rent of \$1,200.00 that was due on June 1, 2016.

The tenants dispute that the monthly rent is \$1,200.00, but is instead \$700.00. The landlord claims that in support of this the landlord has a letter from his lawyer which states that a "Rent Adjustment" cheque was issued for \$1,122.58. The landlord also stated that he has a bank statement which shows that the deposit was made for this amount to the landlord's bank account by the previous owner.

The landlord's witness, S.V. (realtor) stated that he was told by the seller's realtor that the owner told them that monthly rent of \$1,200.00 was being charged.

The tenants stated that they have tried to pay the rent of \$700.00 to the landlord, but that the landlord has refused the monthly rent payments. The landlord confirmed in his direct testimony that he would not accept rent payments of \$700.00 from the tenants when the monthly rent is \$1,200.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find based upon the undisputed affirmed testimony of both parties that the tenants have tried to pay rent, but was refused by the landlord. In this case both parties are in dispute over what the monthly rent should be. The landlord has claimed that monthly rent is \$1,200.00 and relies upon the witness testimony of his realtor who was notified of the rent from the original owner via the owner's realtor. The landlord also provided undisputed affirmed evidence that he received a letter from his lawyer which shows that there was a rent adjustment of \$1,122.58 based upon a prorated amount for the monthly rent. The tenants have disputed that the original rent was \$700.00 and not the \$1,200.00 as claimed by the landlord. The tenants stated that the tenancy was based upon a verbal agreement.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. I reached this conclusion based upon the conflicting evidence of both parties and although the landlord relied upon his witness testimony that he was told that the monthly rent was \$1,200.00 through a third party this is supported by the landlord's undisputed affirmed testimony that a "Rent Adjustment" was made between the buyer and the seller in which a pro-rated amount of \$1,122.58 was paid to the landlord from the old landlord. The tenants did not dispute this portion of the landlord's evidence. The tenants failed to provide sufficient evidence to satisfy me that monthly rent was \$700.00. On this basis I find that the landlord is entitled to monthly rent of \$1,200.00. The 10 Day Notice dated June 2, 2016 is upheld.

Although the landlord refused to accept payment of rent of \$700.00, I find that the tenants did not pay all of the rent owed when it was due or within the five days provided for pursuant to section 46. The tenants confirmed that rent has not yet been paid.

As the tenants are not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession pursuant to section 55 of the Act.

Conclusion

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

The landlord is granted an order of possession.

The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: July 13, 2016

Residential Tenancy Branch