



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 26, 2016 (the "Application").

The Tenants apply 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 July 18, 2016 (the "10 Day Notice"), and an order permitting recovery of the filing fee.

The Tenants attended the hearing on their own behalf. The Landlord also attended the hearing on her own behalf. No additional witnesses were called. All parties giving evidence provided their solemn affirmation.

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.

Issue to be Decided

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

Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on December 15, 2015. Although there is no written tenancy agreement, the parties agreed rent in the amount of \$1,050.00 is due each month. The Tenant did not dispute these terms.

The Landlord provided oral testimony that rent was not received in full for the month of July 2016, with \$100.00 outstanding, and that no rent has been received for August 2016. The Tenants agreed they have not paid rent as alleged.

The Landlord testified she served the 10 Day Notice on the Tenants, in person, on July 18, 2016, with a police officer in attendance. The Tenants agreed the 10 Day Notice was received in this manner on July 18, 2016.

The Tenants confirmed their Application was filed at the Residential Tenancy Branch on July 26, 2016.

Analysis

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

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. On receipt of a notice to end tenancy for unpaid rent, a tenant has five days to either pay the outstanding rent or file an application for dispute resolution.

In this case, the Tenants did not pay rent when due, and did not submit their Application until July 26, 2016, more than five days after receipt of the 10 Day Notice.

Accordingly, the Tenants' Application is dismissed and the 10 Day Notice is upheld. As the Tenants' Application has been dismissed, they are not entitled to recover the filing fee.

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

As I have dismissed the Tenant's Application and find the 10 Day Notice complies with section 52 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenants/

Conclusion

The Tenants' application is dismissed, without leave to reapply, and the 10 Day Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenants. Should the Tenants fail to comply with the order, 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: August 29, 2016

Residential Tenancy Branch

