



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MNDC RR FF

Introduction

The tenants applied under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 5, 2016 (the “10 Day Notice”), for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a rent reduction for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenants, a tenant advocate, and the landlord attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Rules of Procedure, and testimony provided.

No concerns were raised regarding the service of documentary evidence.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 10 Day Notice and the tenants’ application to recover the cost of the filing fee at this proceeding. The balance of the tenants’ application is dismissed, **with leave to re-apply**

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

The parties disputed whether a written tenancy agreement exists between the parties. There is no dispute that a tenancy exists between the parties as the parties agreed that monthly rent in the amount of \$1,000.00 is due on the first day of each month. The parties also agreed that the tenants did not pay a security deposit or pet damage deposit. The start date of the tenancy was May 1, 2016.

The parties agreed that a 10 Day Notice was received by the tenants on August 5, 2016 and disputed the 10 Day Notice on August 10, 2016 which is within the 5 day timeline provided under section 46 of the *Act* to dispute a 10 Day Notice.

The 10 Day Notice indicates that \$800.00 is owed as of July 1, 2016 and also indicates August 2016. The landlord clarified that \$800.00 is owed for August 2016 also and that since serving the 10 Day Notice, the tenants have failed to pay any rent for September 2016 and October 2016 and continue to occupy the rental unit.

The tenants stated that they have performed work for the landlord in lieu of rent however both parties confirmed that there was no written agreement between the parties regarding an arrangement for work towards rent. The tenants confirmed during the hearing that \$800.00 was not paid for July and August 2016 and also confirmed that no rent was paid for September and October of 2016.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The tenants disputed the 10 Day Notice within the 5 day timeline provided for under section 46 of the *Act*. The tenants however confirmed that there was no written agreement between the parties to confirm a work for rent arrangement where specific work would be equal to a specific amount of rent and for what months of rent. Section 26 of the *Act* requires that tenants pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. If the tenants believed that they were owed money from the landlord, they should have paid the rent in full and applied for compensation under the *Act*. Instead, the tenants withheld rent thinking that the landlord owed them money. **I dismiss** the tenants' application due to insufficient evidence. I find the 10 Day Notice issued by the landlord to be **valid and is upheld**. While I make no determination on the amount of rent owing by the tenants as there is no application before me from the landlord, I have considered the lack of a written agreement between the parties regarding a work for rent arrangement. Furthermore, I am satisfied that a portion of rent for July and August remains unpaid and that by the tenants' own testimony, no rent has been paid by the tenants for September and October of 2016. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Based on the above and as the effective vacancy date of August 21, 2016 has already passed, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

I do not grant the tenants the recovery of the cost of their filing fee as their application has been dismissed.

Conclusion

The tenants' application is unsuccessful and is dismissed.

The tenancy ended on August 21, 2016. The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

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: October 5, 2016

Residential Tenancy Branch