



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, MNDC, FF
Tenants: MT, MNDC, OLC, AAT, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought more time to cancel a notice to end tenancy; for orders allowing access; a rent reduction; and a monetary order.

The hearing was conducted via teleconference and was attended by the female landlord and the male tenant. I note the tenant had arranged for a witness to be present at the hearing; however the witness was not called to provide any testimony.

I also note that there was some confusion at the outset of the hearing in regard to the date of submission of the tenants' Application for Dispute Resolution. I reviewed the original documents after the hearing and confirm that the tenants originally submitted their Application for Dispute Resolution on November 17, 2016. I note that the 2nd page of the Application did not include the tenants requesting more time to dispute a notice to end tenancy. On November 18, 2016 the tenants submitted a revised page 2 of their Application that did include a request for more time to dispute a notice to end tenancy. This revised page also indicated that the tenants received the 10 Day Notice on November 17, 2016.

The tenant did try to explain that he received the 10 Day Notice after he started the process for this Application prior to receiving the 10 Day Notice. After the above noted review of the original documents I am satisfied the tenant's explanation of the time of the Application is accurate.

The tenants' Application for Dispute Resolution included a request for more time to dispute a notice to end tenancy. However, I note the tenant indicated on their Application that they received a 10 Day Notice to End Tenancy for Unpaid Rent on November 17, 2016 and submitted their Application to dispute this Notice on November 18, 2016. Section 46 of the *Residential Tenancy Act (Act)* allows a tenant 5 days after receipt of such a notice to file an Application to dispute it.

As such, I find the tenants do not need additional time to dispute the subject Notice. As a result, I amend the tenants' Application for Dispute Resolution to exclude the matter of more time.

I also confirmed with the tenant that part of what his Application included was to dispute the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on November 17, 2016.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in Applications for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims on both the landlords' and tenants' Applications regarding the 10 Day Notice to End Tenancy for Unpaid and the continuation of this tenancy is not sufficiently related to the tenants' claim to allow access to the rental unit for the tenant and their guests; for a rent reduction or for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenants' claims for allowing access; rent reduction and compensation. I grant the tenants leave to re-apply for these outstanding claims under a separate and future Application for Dispute Resolution.

In regard to the landlords' Application for Dispute Resolution I clarified with the landlord that because the tenancy has not yet ended the tenants are entitled to make any repairs or cleaning prior to transferring possession of the unit back to the landlords. As such, I find this portion of the landlords' claim is premature. Therefore, I amend this portion of the landlords' Application to exclude the claim for damage and cleaning.

In addition, the landlord clarified that she wished to continue to hold the security deposit until the end of the tenancy to be dispersed at that time in accordance with all requirements under the *Act*. As such, I amend the landlords' Application to exclude the matter of the security deposit.

In addition, I noted that the landlords' original Application indicated that they were seeking to recover lost revenue for previous months' non-payment of rent and for the

potential of non-payment of rent for the month of February 2017. Since rent for February 2017 was not due at the time of the hearing, I advised the landlord I would not consider their request to include that rent.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in February 2016 on a month to month basis for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid.

The tenants submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 27, 2016 with an effective vacancy date of November 28, 2016 indicating that the tenants had failed to pay rent in the amount of \$1,000.00 that was due on November 1, 2016.

The landlord testified that the tenants have not paid any rent for the months of November or December 2016 or for the month of January 2017. The tenant agreed that they have not paid rent for these months, but that he has the money available and can pay the landlords anytime.

The tenant explained that since he had filed his Application for Dispute Resolution seeking arbitration on their claim for compensation; rent reduction; and access to the property for the tenants and their quests they stopped paying the rent. The tenant submitted that he has continued to say the money for the rent for these periods and is prepared to pay the landlords after the arbitration was settled, if required.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier

than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Despite the tenants' submission that they believed that they did not need to pay rent until the matters in their Application were dealt with in the hearing, I find they have provided no evidence from the *Act* that allows for a tenant who has submitted an Application for Dispute Resolution to withhold any payment of rent.

As a result, I find the tenants were required to pay rent for the months of November and December 2016 and January 2017. I find the tenants had no authority under the *Act* to withhold any payment of rent and that they failed to pay the rent after receiving the landlords' 10 Day Notice to End Tenancy for Unpaid Rent.

As a result, I find the landlords are entitled to end the tenancy in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent Issued. Despite the issue date on the 10 Day Notice submitted by the tenants being November 27, 2016 I am satisfied by the testimony of both parties that the tenant received the Notice on November 17, 2016 confirms the date on the Notice was only an administrative error and does not render the Notice invalid.

Conclusion

Based on the above, I dismiss the tenants' Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent.

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,100.00** comprised of \$3,000.00 rent owed and the \$100.00 fee paid by the landlords for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: January 04, 2017

Residential Tenancy Branch