



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 3BBB Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR

Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenants have applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on January 12, 2017.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were able to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

One of the two tenants attended the hearing.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on January 10, 2017 be cancelled?

Background and Evidence

The tenancy commenced on May 1, 2016. Rent is \$1,300.00 due on the first day of each month. The parties signed a tenancy agreement; a copy was not supplied as evidence.

The tenant confirmed receipt of a 10 day Notice to end tenancy for unpaid rent or utilities on January 10, 2017. The Notice had an effective date of January 20, 2017. The tenants disputed the Notice within five days of receipt.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,600.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the

date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that they have not paid rent for December 2016, January 2017 and that February 2017 rent has not been paid.

Analysis

I find that the tenants received the Notice to end tenancy on January 10, 2017, the date the tenant confirmed receipt.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants received this Notice on January 10, 2017, I find that the earliest effective date of the Notice is January 20, 2017; the date on the Notice.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on January 20, 2017, pursuant to section 88 of the Act.

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. The tenants disputed the Notice but have confirmed that rent has not been paid since November 2016.

Section 46(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; January 20, 2017. As a result the tenants have been over holding since January 20, 2017.

As I have determined that the tenants failed to pay rent I find that the 10 day Notice to end tenancy for unpaid rent issued on January 10, 2017 is of full force and effect and that the tenant's application is dismissed.

Section 55(1) of the Act provides:

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.

Therefore, as the tenants' application is dismissed I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

The landlord has been granted an order of possession that is effective two days after service to the tenants. This order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenancy ended effective January 20, 2017.

The tenants' application is dismissed.

The landlord has been issued an order of possession.

This decision is final and binding 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: February 08, 2017

Residential Tenancy Branch