



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: OPR MNR CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants requested:

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

While the landlord, EC (‘landlords’), attended the hearing by way of conference call, the tenants did not. I waited until 11:15 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords gave sworn testimony that on February 17, 2017 copies of the Application for Dispute Resolution hearing package (‘Application’) and evidence were personally served to the tenants. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with copies of the landlords’ application and evidence.

The landlords provided undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of February 16, 2017, on February 6, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 6, 2017.

The landlords indicated during the hearing that the tenants had paid all of the outstanding rent up to, and including March 2017 rent, which was for use and occupancy only. The landlords withdrew their application for a monetary order for unpaid rent.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

The landlords testified regarding the following facts. This month-to-month tenancy began on December 15, 2015 with monthly rent set at \$700.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$350.00. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice on February 6, 2017 to the tenants, indicating an effective move-out date of February 16, 2017. The landlords testified that the tenants were late paying rent, but since the Notice was issued, the tenants have paid the rent in full, which was for use and occupancy only. The landlords included, in their evidence, receipts for the rent payments. December 2016 rent was paid on December 21, 2016, January 2017 rent was paid on January 27, 2017, February 2017 rent was paid on February 24, 2017, and March 2017 rent was paid on February 28, 2017. The landlords are seeking an Order of Possession.

Analysis

Section 55(1) of the *Act* reads as follows:

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.

In the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.

I find that the landlords' 10 Day Notice complies with Section 52 of the *Act*, and is valid. Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, February 16, 2017. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenants' application without leave to reapply. The landlords withdrew their application for a monetary order for unpaid rent.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed 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: March 16, 2017

Residential Tenancy Branch