



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

BC ('landlord') appeared as agent on behalf of the landlord, and had full authority to do so. AJ ('the tenants') appeared and testified on behalf of both tenants in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord acknowledged receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the Act, I find the landlord was duly served with the Application. The tenants confirmed receipt of the landlord's evidence. In accordance with sections 88 and 90 of the Act, I find that the tenants were duly served with copies of the landlord's evidence.

The landlord testified that he had served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants on March 6, 2017 with an effective date of March 20, 2017, by way of posting to the tenants' door. In accordance with sections 88 and 90 of the Act, I find the tenants deemed served with the 10 Day Notice on March 9, 2017, three days after posting.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified this tenancy began on February 1, 2016. Rent is currently set at \$959.20 per month, payable on the first of the month.

The landlord issued the 10 Day Notice on March 6, 2017 as the tenants failed to pay \$34.20 in outstanding rent for March 2017. The landlord testified that the tenants did eventually pay the outstanding rent on March 15, 2017, which was for use and occupancy only.

The tenants testified in the hearing that they were on social assistance, and received a Notice of Rent Increase in November of 2016. The rent increase was \$34.20 per month, and took effect

on March 1, 2017. The tenants testified that they had notified social assistance, but an error had occurred, and only \$925.00 was paid to the landlord on February 22, 2017 for March 1, 2017 rent. The tenants were unaware that the rent increase was not paid until they had received the 10 Day Notice on March 6, 2017 from the landlord. The tenants filed for dispute resolution on March 8, 2017, and they paid the \$34.20 to the landlord on March 15, 2017.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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 a right under this Act to deduct all or a portion of the rent.

I accept the tenants' testimony that something had occurred when making arrangements with social assistance to ensure monthly rent payments reflect the increased amount as of March 1, 2017. It was also undisputed that that they did pay the outstanding rent in the amount of \$34.20 to the landlords on March 15, 2017.

Section 46(4) of the Act provides that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect". I must note, however, that the tenants were deemed to have received the 10 Day Notice on March 9, 2017, and the last day to pay was March 14, 2017. As such the 10 Day Notice is still in effect.

I also note that the tenants, in the hearing, had confirmed that they had received the Notice of Rent increase in early November of 2016 from the landlord, and this increase did not take effect until March 1, 2017. I find that the tenants, within these four months, had ample opportunity to follow-up with social services and the landlord to ensure that this increase would be reflected in the March 2017 rent payment. Even after being made aware of the discrepancy and error, the tenants did not take immediate action, and failed to respond to the 10 Day Notice on time as noted above. Accordingly, I find that the tenants were aware of the error by social services, and the fact that they owed the landlord rent on March 9, 2017, and that they had not made any payments to the landlord until March 15, 2017.

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.

I find that the tenants had failed to pay the outstanding rent as required by the *Act*, and I am dismissing the tenants' application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord 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 to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of March 20, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenants and any occupant 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: April 10, 2017

Residential Tenancy Branch