



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and for more time to do so.

One of the named tenants and one of the named landlords attended the hearing. Both gave affirmed testimony.

Service of the tenants’ application and notice of hearing was not at issue.

At the outset of the hearing the tenant advised that he was seeking more time to pay outstanding rent and not more time to apply to cancel the 10 Day Notice. The tenant was advised that this is not an option available under the Act. Accordingly, and because the tenants’ application was filed within the applicable timeline, the issue before me was whether the 10 Day Notice should be cancelled.

Issues

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the landlords entitled to an order of possession?

Background and Evidence

The 10 Day Notice is dated February 25, 2017. It claims outstanding rent of 900.00 for February, 2017. It was agreed that the 10 Day Notice was posted on door of the rental unit on February 25, 2017 and the tenant attending the hearing received it the same day.

There was no written tenancy agreement in evidence. However, the parties agreed that this tenancy began about six months ago and that rent is \$900.00 per month, due on the first of the month.

The tenant and the landlord also agreed that rent is outstanding for February, March, and April. The tenant advised that he has not paid rent because he has not been able to do so. The landlord advised that the landlords are not concerned with outstanding rent and would like only an order of possession.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

Here, the tenant agrees that rent has not been paid for three months. Accordingly, the tenants are conclusively presumed to have accepted that the tenancy ended on March 8, 2017, the effective date of the 10 Day Notice.

I find that the landlord's 10 Day Notice complies with section 52 of the Act. Therefore I also find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act.

Conclusion

The tenants' application is dismissed without leave to reapply, and the landlords are granted an order of possession **effective two (2) days from the date of service**. Should the tenants or anyone on the premises fail to comply with this order, it 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 s. 9.1(1) of the Act and is final and binding unless otherwise indicated in the Act.

Dated: April 03, 2017

Residential Tenancy Branch