



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the 10 day Notice to End Tenancy dated May 20, 2017.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was personally served on the Tenant on May 20, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenants was served on the landlord by mailing, by registered mail to the address for service set out in the Notice to End Tenancy. The landlords submitted they were not served. The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where they reside or to an address for service. The tenants provided a tracking number for registered mail for Canada Post. It indicates the documents were sent but the landlord failed to claim them. I determined there was sufficient service.

There are a number of disputes between the parties. I advised the party the only issue I could deal with is the one issue set out in the Application for Dispute Resolution being whether the 10 day Notice to End Tenancy was valid. Evidence not relevant to this issue was not admissible. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated May 20, 2017?

Background and Evidence

The tenancy began on March 1, 2017 when the tenants and PW entered into a one year fixed term tenancy agreement with the landlord JH commencing March 1, 2017 for a rent of \$1400 per month “due and payable the first day of each month by way of email transfer. Partial payments are not accepted.” The Tenants paid a security deposit of \$700.

The tenants testified that on March 29, 2017 they gave their share of the rent for April in the sum of \$1000 to PW to be paid to the landlord. PW never sent the rent. On April 11, 2017 PW and a friend of his invaded their home and stole monies that had been saved for the rent.

The tenants testified they made a claim with Victims Services. The tenant testified he discussed the situation with the landlord and told the landlord that Victims Services would be covering his loss of rent for April. He testified the landlord agreed to this. The landlord testified he did not agree. The tenant further testified they paid the rent for May by way of an e-transfer on April 29, 2017.

The Tenants rely on the following e-mails:

- An e-mail from the tenants to JH dated April 24 that states: “Hey james were having to go through Victim Services for rent. The funds that I had are being held for court because the accused say its his. ...so were still going to pay it its just going to take a bit to process application. Also were going to have rent for may this week but don't want it confused with out past due rent. The victims service office is 100% paying Aprils rent....were filing arbitration against eviction as a formality. Just to hold it off for them to pay it. Again very sorry this happened. Thx.”
- On April 25 JH responded “ok thank you for the update. Any idea when I can expect rent?”
- On April 28 the tenants responded “We will have the rent before 1st and victims services will be covering your loss you indured for april rent. Not sure when...do we really have to do this arbitration. Its gonna cost both of ...let me know k asap or ill have to pay express post to you with package...”

The landlord testified they have a tenancy agreement with the Tenants and did not agree to look to Victims Services as the entity responsible to pay the rent for April. The rent for April has not been paid. Victims Services has not contacted them to say Victims Services would pay the rent. The landlord have not agreed to release the tenants from the obligation to pay the rent for April.

The tenants produced a letter dated May 16, 2017 from a Claims Coordinator for Crime Victim Assistance Programs indicating the following:

- They had received their claim on behalf of CH for crime victim assistance.
- They were in the process of collecting information and after the necessary information is collected this file will be forwarded to an adjudicator to determine eligibility for benefits. Please note CVAP is not an immediate needs benefit program.

Analysis:

The landlord has used the approved government form. Both parties agree the rent for April has not been paid. The issue is whether there is a binding agreement that obliges the landlord to look only to Victims Services for the payment of the rent for April. After carefully considering all of the evidence I determined the tenants failed to prove that a binding agreement exists for the following reasons:

- The tenants failed to prove the landlord agreed to look solely to Victims Services for the payment of the rent. I do not accept the submission of the Tenants that the exchange of e-mails proves this agreement. The landlords' response ""ok thank you for the update. Any idea when I can expect rent?" is proof that they would accept the payment from Victims Services but not that they agreed to relieve the tenants from responsibility to pay this rent.
- Further, even if there was an agreement such it is not supported by consideration. The tenants had a legal obligation to pay the rent on April 1, 2017. There is no consideration given by the tenant that would require the landlord to look solely to a third party for payment as the tenants.
- I determined the email from the Tenant states "Victims Services is 100% paying the rent" amounts to a misrepresentation. The letter from Victims Services dated May 16, 2017 is in conflict with this representation. It states they are collecting information and will send it to an adjudicator to determine eligibility. Further, they were processing an application filed by the tenants on behalf of CH. There is no evidence the tenants filed on application on their own behalf.
- I determined the Tenants represented that Victims Services would be paying the April rent relatively quickly. The tenants acknowledged the process has delayed the payment. Even if one considered the landlord had agreed to the proposal

there is an implied term the paying of the arrears would be relatively quickly. In my view a delay of more than 2 ½ months with no indication of when a payment date would be made does not meet this requirement of payment within a reasonable period of time.

In summary I determined the Tenants failed to prove the landlord agreed to look only to Victims Services to pay the rent for April thus relieving them of the obligation to make this payment.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession within 2 days of service of this order. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: June 27, 2017

Residential Tenancy Branch