



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") for the following reasons: to cancel a 10 Day Notice to End Tenancy for Unpaid Utilities (the "10 Day Notice") dated July 2, 2017; for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Landlord.

The Tenant, the Landlord, and the Co-Landlord named on the tenancy agreement appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of notice of this hearing and confirmed that the Tenants were applying to dispute the 10 Day Notice. The Tenant confirmed that he had not provided any documentary evidence prior to this hearing and had received the Landlord's 24 pages of documentary evidence by registered mail.

The hearing process was explained and no questions were asked on how the proceedings would be conducted. Both parties were given a full opportunity to present evidence, make submissions, and to cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Are the Tenants entitled to cancel the 10 Day Notice? If not, how will the tenancy end?
- Is the Landlord to comply with the tenancy agreement regarding the payment of the water bill?

Background and Evidence

The parties agreed that this tenancy between the Tenants and the Landlords started on December 15, 2016 for a fixed term of one year which is set to expire on December 15,

2017. The signed tenancy agreement requires the Tenants to pay rent in the amount of \$1,850.00 on the first day of each month.

Section 3 of the agreement also requires the Tenants to pay, amongst other things, for water supply, electricity, sewage disposal and garbage collection. The parties also signed a document dated December 18, 2016 which requires the Tenants to pay for hydro, water and oil. However, with respect to the payment of oil, the parties agreed that the Tenants would pay the Landlords directly \$100.00 per month for a maximum of \$650.00 in exchange for oil to be supplied by the Landlords. This was recorded as a signed agreement. However, the parties testified that the signed agreement for the oil payments had been reduced by oral agreement to a maximum amount payable by the Tenants of \$400.00.

The Landlord testified the Tenants were not in any rental arrears. However, since the tenancy has started they had only paid \$150.00 for the oil payments they were required to make under the signed agreement, leaving an outstanding balance of \$250.00. In addition, the Tenants have also failed to pay their water bill in the amount of \$217.93. The Landlord provided a copy of the water bill dated May 11, 2017 which details that the water account for the rental unit is in arrears and if it is not paid, it will be added to the owner's property taxes. The Landlord then proceeded to make the payment on June 29, 2016 for the water bill which he provided into evidence.

The Landlord testified that the Tenants were personally served with two demand letters dated May 16 and May 18, 2017 which requested the Tenants to pay the utilities for the oil and water in the amounts detailed above. The Landlord provided the demand letters into evidence.

The Landlord testified that the Tenants did not respond to the demand letters and as a result, they were personally served with the 10 Day Notice on July 2, 2017. The 10 Day Notice was provided into evidence and shows a vacancy date of July 12, 2017 due to \$467.93 in unpaid utilities following a demand letter served on May 18, 2017.

The Tenant confirmed receipt of the two demand letters and the 10 Day Notice by personal service. The Tenant did not dispute the amount outstanding for the oil utilities but testified that the oil provided to him by the Landlord was not enough to last him the duration of the tenancy. The Tenant stated that he had the money for the Landlords to pay them for the oil but the Landlords did not respond to an email he sent them on July 5, 2017 informing them that he had borrowed \$250.00 for the oil.

The Tenant submitted that he lost his job and the Landlord has not undertaken repairs to the rental unit. The Tenant stated that he should not have to pay the water bill because it is a general utility bill that encompasses sewage, garbage and compost fees which they are not responsible for paying. The Tenants want the Landlord to comply with the tenancy agreement in this respect.

The Co-Landlord testified that the Tenant had not notified them of any repairs to the rental unit until he sent the Landlord an email after the Tenants had been served with the 10 Day Notice. The Landlord testified that if the Tenants wanted to pay the utilities they could have simply called the Landlords to make the payment, but the Tenants have no intention to pay the utilities.

Analysis

Section 46(1) of the Act allows a landlord to end a tenancy for unpaid rent. I have examined the copy of the 10 Day Notice and I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence that the Tenants received the 10 Day Notice on July 2, 2017, by personal service pursuant to Section 88(a) of the Act.

The Tenants filed the Application disputing the 10 Day Notice on July 7, 2017. Therefore, I find it was filed within the five day time limit provided for by Section 46(4) (b) of the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act, unless the Tenant has authority under the Act to withhold or deduct from rent.

Section 46(6) of the Act provides that if a tenancy agreement requires a tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 Day Notice.

I accept that under the terms and conditions of the signed agreement provided into evidence, which the parties agreed to modify verbally, the Tenants were required to pay the Landlords \$100.00 per month for oil provided to them by the Landlord for a maximum amount of \$400.00 and to pay monthly water bills.

In this case, I accept the undisputed evidence that the Tenants have failed to pay the \$250.00 balance outstanding for the oil that they were required to pay after receiving the

30 day demand letters. Therefore, the Landlords were at liberty to treat the unpaid utilities as unpaid rent and were correct in issuing the Tenants with the 10 Day Notice.

The Act places the onus on a tenant to pay rent and it is not the landlord's obligation to chase the tenant for it. I do not accept the Tenant's assertion that because he sent the Landlord an email stating that he was in possession of the \$250.00 outstanding for the oil payment, that this is sufficient for me to determine the oil utility was paid and that the Tenants now get to escape the 10 Day Notice. Rather, I find the Tenants made no attempt to get the monies owed to the Landlords within the five day period allowed by the 10 day Notice and this amount still remains unpaid.

Furthermore, the Tenants did not disclose any authority to withhold the utility payment under the Act. If the Tenants had any issue with the construction and execution of the utility agreements made or with the Landlords' alleged failure to do repairs to the rental unit, the Tenants would have still been obligated to pay the utility arrears and seek remedy and re-imbursement through dispute resolution after proving the allegations. A tenant cannot obtain such remedy through withholding rent. Accordingly, I dismiss the Tenants' Application to cancel the 10 Day Notice.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a notice to end tenancy the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant's Application is dismissed.

As I have made a finding that the 10 Day Notice complies with the Act and the Tenants' Application to cancel it has been dismissed, the Landlord must now be granted an Order of Possession.

As the Tenants have paid rent up until the end of July 2017, I issue the Landlord with an Order of Possession effective for July 31, 2017 at 1:00 p.m. The Act does not allow me to take factors, such as the difficulty a tenant may have in paying rent or finding another place to move to as a means to extend this time limit.

The Tenants must be served with a copy of the order and this may then be enforced through the Supreme Court of British Columbia if the Tenants fail to vacate the rental unit.

The Tenants failed to provide sufficient evidence that the water bill the Landlord provided into evidence encompasses other charges as claimed by him. The water bill provided by the Landlord into evidence does not show the charges testified to by the Tenant. The Tenants provided no documentary evidence to support the oral evidence

regarding the water bill. As the Tenants have failed to prove that the Landlords have breached the Act or the tenancy agreement, I also dismiss this portion of the Application.

Conclusion

The Tenants have failed to pay utilities in this tenancy. Therefore, the Tenant's request to cancel the 10 Day Notice is dismissed. The Tenants' request for the Landlord to comply with the tenancy agreement is denied. As the Tenants have not been successful in their claims, their request for the recovery of the filing fee from the Landlords is also denied.

The Tenants' Application is hereby dismissed without leave to re-apply. The Landlord is granted an Order of Possession effective for the end of July 2017.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: July 25, 2017

Residential Tenancy Branch