



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, MNDC, RR

Introduction

A hearing was convened to deal with the tenants' application under the *Residential Tenancy Act* (the "Act") for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2017 (the "10 Day Notice"), for more time in which to do so, for monetary compensation, and for a rent reduction.

At the outset of the hearing, I noted that the tenants' application for more time is not necessary because they have applied to cancel the 10 Day Notice in time. Accordingly, I will not consider that issue.

The named property managers attended for the owner of the building and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

The tenants did not attend at the hearing of their own application.

Issues to be Decided

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

If not, is the landlord entitled to an order of possession?

Are the tenants entitled to a rent reduction or monetary compensation?

Background and Evidence

According to the property managers' affirmed and undisputed evidence, this tenancy began in or around the Spring of 2016 and is a month to month tenancy. Rent of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid at the beginning of the

tenancy. There is no written tenancy agreement. The landlord is reminded that the landlord is required by the Act to have a written tenancy agreement.

The managers testified that the 10 Day Notice was served on the tenants on July 3, 2017 when it was posted on their rental unit door. It claims \$1,200.00 in arrears, for June and July.

A letter from an agent for a bank dated May 1, 2017 was in evidence. That letter states that all further payments are to be made to the bank. It also states (confusingly) that this direction commences May 1, 2017 and June 1, 2017.

Another letter in evidence dated June 29, 2017 from the property managers to the tenants advises that the July rent should be paid to the landlords. The tenants submitted this letter as well as the May 1 letter into evidence and have indicated in handwriting on the June 29, 2017 letter that it was "received June 30, 2017 at 4:15 hanging out of the mailbox."

In the June 29 letter the managers note that the tenants were contacted in late April as to "where and when you should pay your rent" and that the tenants' "rent payment was canceled for the June and July payments." The managers also say in the letter that the property owner has since paid the taxes being demanded and is back in control of the property but that it is "unclear if they received the rent for June and July 2017. The bank doesn't seem to have that information, so we will need confirmation . . . from you or the ministry."

The managers testified that they did not receive July rent from the tenants. They said that they asked the tenants for proof that they had made their July rental payment to the bank and the tenants responded that they were not provided with any receipt from the bank.

The property managers also said that the tenants have since paid rent for August and September.

According to the property managers, the tenants remain in the rental unit and are good tenants. The property managers do not want to end this tenancy but feel they have no choice but to ask for an order of possession if the tenants' application fails. The managers are aware that they can enter into a new tenancy with the tenants if the current tenancy is ended by this decision.

Although the tenants did not attend at the hearing, they have included a letter directed to the Residential Tenancy Branch stating that the landlord is trying to evict them for unpaid rent for June 2017 when the property was in the possession of the bank and when as a result the landlord had no legal right to the June rent. The tenants' submissions also include this: "As for the July rent I have not received any documents from [the bank] stating that the rent is to go to [the landlord]. I'm unsure where to pay until this is resolved and I see solid proof who to pay. I'm not wanting to be a scam victim."

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. Based on that undisputed testimony and the fact that the tenants have applied to cancel the 10 Day Notice, I accept that the tenants were served with the 10 Day Notice on July 6, 2017, three days after it was posted as per s. 90 of the Act.

Section 46(5) of the Act provides that if a tenant has not paid outstanding rent in full or applied to dispute a 10 Day Notice within five days of receipt of the 10 Day Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Here, the tenants have applied within five days of receipt of the 10 Day Notice to dispute it. Although they have not attended at the hearing, they have provided written submissions. In those submissions they have admitted that they have not paid July's rent because it is not clear where they should be paying it.

The property managers have testified that the tenants have since paid August and September rent. As the tenants have not attended to say otherwise, I accept that this is so. However, I note that the managers have not provided any documentary evidence of rental payments over the course of this tenancy.

As July rent remains outstanding by the tenants' own admission, s. 46(5) requires me to uphold the 10 Day Notice. I find that this tenancy ended on July 16, 2017, the corrected effective date of the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date.

The landlords are entitled to an order of possession, pursuant to section 55 of the Act. I find that the 10 Day Notice complies with section 52 of the Act.

Ordinarily when rental payments are outstanding the landlord will receive a two (2) day order of possession. However, in light of the confusion around when payment should be made, which is the responsibility of the landlord, the bank, and its agent, but not the tenants, I grant the landlord an order of possession effective at **1:00 pm on September 30, 2017.**

Additionally, although this tenancy has ended, the parties are reminded that they may enter into a new tenancy agreement.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed.

The balance of the tenants' application is dismissed without leave to reapply as they did not attend at the hearing.

I grant an order of possession to the landlord effective **at 1:00 pm on September 30, 2017**. 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.

Alternatively, the landlord may wish to negotiate a new tenancy agreement with the tenant. The landlord is not required to enforce the order of possession.

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. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 21, 2017

Residential Tenancy Branch