



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

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

Both parties (2 tenants and 1 landlord) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord attended at the start of the hearing and, when the tenants joined the line several minutes later, the landlord reviewed the testimony he had provided in support of his oral request for an Order of Possession. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The tenants both confirmed receipt of the 10 Day Notice issued by the landlord on July 2, 2017. The landlord confirmed receipt of the tenant's Application for Dispute Resolution that was filed and sent by registered mail to the landlord on July 10, 2017. He testified that he had only received it the day before the hearing but he was prepared to proceed with the hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession?

Background and Evidence

While I have reviewed and considered all of the evidence and testimony that has been provided by both parties for this hearing, I will only refer to the relevant testimony and documentary evidence that has been provided. I note that all of the parties at this hearing were very outspoken, tended to interrupt each other and the arbitrator during the course of the hearing. One of the parties was particularly loud and belligerent. All of

the parties seemed pre-occupied with events in their own surroundings and not fully attentive to the hearing process. I provided additional time to each individual on the line to speak more fully than was necessary with respect to the narrow issue before me in an attempt to allow the parties to speak their minds.

Neither the tenants nor the landlord were certain of the start date of this tenancy. The rental amount of \$1500.00 was payable on the first of each month. None of the parties present were able to advise whether there was a security deposit paid by the tenants. The parties were able to agree that the landlord issued a 10 Day Notice to End Tenancy to the tenants on July 2, 2017 after the tenants failed to pay rent in accordance with section 26 of the Act.

The landlord sought to end the tenancy for unpaid rent for the month of July 2017. The landlord testified that the tenant did not pay rent of \$1500.00 due on July 1, 2017. The landlord provided undisputed testimony that, as of the date of this hearing, the tenants had not paid rent on: July 1, 2017; August 1, 2017; September 1, 2017; and October 1, 2017. The landlord did not make an application with respect to an Order of Possession and/or a monetary order in relation to the tenant's unpaid rent.

The landlord issued a 10 Day Notice. The tenants applied to cancel that notice however they do not dispute that they have failed to pay rent. The tenants submitted that they did not have to pay rent because they chose to dispute the notice to end tenancy. The tenants submitted that they chose to cease paying rent to save money for moving. The tenants both testified that they cannot pay rent – that they do not have the money to do so and that they had told the same points to the landlord.

The tenants provided further reasons for their non-payment of rent. The tenants testified that the elevator was broken down for a period of time of approximately 2 weeks. One tenant testified that she was unable to get down the stairs without help from other occupants in the building. The tenants testified that many of the rental units in the residential premises have been condemned or are being investigated. The tenants also testified that the landlord treated them poorly and behaved inappropriately in their presence.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice to end tenancy issued. On issuing a 10 Day Notice to End Tenancy for Unpaid Rent on July 2, 2017, the landlord claimed that the tenant had not paid rent in accordance with the Act. The tenants acknowledge that they have not paid rent however they testified that they believed they were not required to pay rent for a variety of reasons including incomplete improvements to the rental unit as requested by the tenants.

Section 26(1) of the Act establishes that “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.” In this case, I do not need to consider with the landlord has complied with the Act. The tenants did not apply to have their rent reduced or to have repairs completed. The tenants’ sole application is to cancel the notice to end tenancy and have their tenancy continue.

I find that the tenants failed to pay the July 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have shown insufficient evidence to support their claim that they were entitled to withhold rent. They have not made a previous application to request a rent reduction or to address the repairs they made reference to in this hearing. As the tenants did not pay their rent in full after the issuance of the 10 Day Notice and as I find they have provided no acceptable reason pursuant to the Act to withhold rent, the tenants are required to vacate the premises.

Section 55 of the Act reads,

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 landlord's notice to end tenancy complies with section 52 of the Act. I dismiss the tenant's application to cancel the notice to end tenancy. Therefore, I find that the landlord is entitled to a 2 day Order of Possession.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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: October 10, 2017

Residential Tenancy Branch