

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS CNR LRE MNDCT MT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenants' application to:

- cancel a landlord's 10 Day Notice to End Tenancy For Unpaid Rent ("10 Day Notice") pursuant to section 46 of the *Act*;
- more time to make an application to cancel a Notice to End Tenancy pursuant to section 66 of the *Act*;
- recover a monetary award from the landlord pursuant to section 67 of the *Act*; and
- suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70 of *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords were represented at the hearing by their agent, S.A., while tenant J.C. attended the hearing on behalf of the tenants.

Tenant J.C. confirmed receipt of the landlords' 10 Day Notice to End Tenancy on November 10, 2018. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the landlords 10 Day Notice.

Landlord K.J. confirmed receipt of the tenants' application for dispute resolution in person. Pursuant to section 89 of the *Act* the landlords are deemed to have been served with the tenants application for dispute resolution.

Following opening remarks, the Tenant J.C. explained that the tenants were not seeking a monetary award as indicated on their application for dispute resolution. Pursuant to section 64(3)(c) of the *Act*, the tenants application is amended to reflect this change. In addition, the landlords' agent explained that the 10 Day Notice served on the tenants contained an incorrect figure in the area indicating the amount of money which was outstanding. The landlords' agent noted that the figure cited on the 10 Day Notice was \$1,000.00, when in fact the true number was \$1,050.00. I find that the tenants would not

be unfairly prejudiced by this mistake and find the notice pursuant to section 52 of the *Act* to be valid.

Issue(s) to be Decided

Can the tenants cancel the landlords' 10 Day Notice to End Tenancy?

Can the tenants set or suspend conditions on the landlords' right to enter unit?

Should the tenants be allowed to sublet their unit because the landlords' permission has been unreasonably withheld?

Background and Evidence

Tenant J.C. explained that this tenancy began on March 1, 2014. Rent was \$975.00 per month, and a security deposit of \$487.50 continues to be held by the landlords.

The tenant said that a flood which occurred on October 14, 2017 led the rental unit to become uninhabitable. She said that as a result of the flood, the tenants chose not to pay rent. The tenant acknowledged not paying rent of \$75.00 in October and in full for November 2017 but argued that the home was uninhabitable because of this flood and subsequent mould damage. The tenant noted that steps had been taken by the landlords to address the flood and that a restoration company had attended the property but she said the landlords were using the flood as an excuse to evict them from the rental unit.

In addition to their application disputing the 10 Day Notice, the tenants have applied for orders related to suspending or setting conditions on the landlords' right to enter the rental unit, and allowing tenant J.C.'s boyfriend to attend the premises. As part of her evidentiary package, the tenant provided written submissions describing the manner in which she felt the landlords had denied her a right to allow her boyfriend on the property.

Analysis

The tenants failed to pay rent of \$75.00 for October 2017, along with rent for entire month of November 2017 within five days of receiving the 10 Day Notice to End Tenancy. The tenants acknowledged not paying rent for the time period listed above, but argued that rent should not be due because of a flood that occurred in the rental unit.

Section 26(1) of the *Act* states, “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.” I find that the tenants’ failure to pay rent has led to the end of their tenancy pursuant to section 46 of the *Act*. As described above Section 26 of the *Act*, rent is due, *whether or not the landlord complies with the Act*. I find that the tenants did not have any right under the *Act* to deduct all or a portion of their rent and they did not have an order to do so. If the tenants had concerns regarding the flood, they should have applied for dispute resolution asking for an Order allowing them to deduct all or a portion of their rent. A tenant cannot simply choose not to pay rent because of an incident in rental unit.

I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants.

As the tenants were unsuccessful in their application to cancel the landlords’ notice to end tenancy and their tenancy is ending, the remainder of their application is dismissed.

Conclusion

The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within 2 days of service of this Order, the landlords may enforce this Order in the Supreme Court of British Columbia.

As this tenancy is ending within 2 days of service of the Order of Possession, the remainder of the tenants’ application is dismissed without leave to reapply.

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: February 7, 2018

Residential Tenancy Branch