



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 15, 2018 ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlord to comply with the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The two tenants did not attend this hearing, which lasted approximately 25 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he was advised of this hearing date verbally. However, he was aware of the claims made in the tenants' application for dispute resolution hearing package. In accordance with section 71(2)(c) of the Act, I find that the landlord was sufficiently served with the tenants' application.

The landlord testified that the tenants were served with the landlord's 10 Day Notice on January 15, 2018, by way of posting to their rental unit door. The notice indicates an effective move-out date of January 25, 2018. In accordance with sections 88 and 90 of the Act, I find that the tenants were deemed served with the landlord's 10 Day Notice on January 18, 2018, three days after its posting. I also note that the tenants applied to cancel this 10 Day Notice in this application.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on March 1, 2016. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$475.00 and a pet damage deposit of \$200.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,265.00 due on January 1, 2018. The landlord stated that this balance included unpaid rent of \$315.00 for December 2017 and unpaid rent of \$950.00 for January 2018. The landlord claimed that since the notice was served, rent for February and March of \$950.00 for each month, were also unpaid by the tenants. The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, tenants may dispute a 10 Day Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants were deemed to have received the 10 Day Notice on January 18, 2018, and filed their application to dispute it on January 19, 2018 with amendments made on January 23, 2018. Therefore, they were within the five day time limit to dispute the notice.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case required the tenants to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on January 1, 2018, within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent or to appear at this hearing to pursue their application, led to the end of this tenancy on January 28, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 28, 2018.

Section 55(1) of the *Act* reads as follows:

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.*

As noted above, I dismissed the tenants' application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' entire 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: March 22, 2018

Residential Tenancy Branch