



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, CNC, ERP

Introduction

A hearing was convened on March 01, 2018 in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent, to cancel a Notice to End Tenancy for Cause, and to make repairs to the rental unit.

The Tenants attended the hearing on March 01, 2018 but the Landlord did not. The Residential Tenancy Branch Arbitrator conducting the hearing on March 01, 2018 granted the Tenants' application to cancel the Notice to End Tenancy for Unpaid Rent and to cancel a Notice to End Tenancy for Cause. The Arbitrator did not make a finding on the Tenants' application for emergency repairs, as the Tenants withdrew that application during the hearing.

The Landlord filed an Application for Review Consideration and on March 12, 2018 a Residential Tenancy Branch Arbitrator concluded that a new hearing should take place. This is an entirely new hearing and is not based on any of the findings made by the previous Arbitrator on March 01, 2018.

This hearing was convened to consider the merits of the Tenants' original Application for Dispute Resolution. The Landlord stated that he refused to accept the original Application for Dispute Resolution when it was initially served to him by the Tenants. He stated that he obtained a copy of that document from the Residential Tenancy Branch on March 05, 2018.

The Landlord stated that on March 14, 2018 he personally served each Tenant with the Review Consideration Decision, the Notice of Hearing for these proceedings, and the evidence he submitted with the Application for Review Consideration. On the basis of this testimony and in the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing. The Landlord's evidence is accepted as evidence for these proceedings.

As the Tenants were served with notice of this hearing in accordance with section 89 of the *Act*, the hearing proceeded in the absence of the Tenants

The Landlord stated that he has never received the two pages of evidence the Tenants submitted to the Residential Tenancy Branch. As the Tenants did not attend the hearing to establish that these documents have been served to the Landlord, I cannot accept them as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

This decision is based on the testimony provided at the hearing on April 11, 2018 and on the documents that were accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent and/or the Notice to End Tenancy for Cause be set aside?

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

The Landlord stated that:

- the Tenants were living in the rental unit with his mother when his mother passed away in November of 2017;
- the Tenants are his brother and nephew;
- he does not know if the Tenants were paying rent to his mother;
- he believes the Tenants were paying a portion of the living expenses while they were living with his mother;
- he and his mother were co-owners of the rental unit;
- he is now the sole owner of the rental unit;
- after his mother passed away he entered into a verbal agreement with the Tenants which required the Tenant with the initials "JK" to pay rent of \$500.00 for December of 2017 and the Tenant with the initials "CL" to pay rent of \$1,000.00 for December of 2017;
- the verbal agreement with both Tenants was that they would vacate the unit at the end of December;
- the Tenant with the initials "JK" paid \$100.00 in rent for December on December 18, 2017 and the still owes \$400.00 in rent for that month;
- the Tenant with the initials "CL" paid \$500.00 in rent for December on November 22, 2017 and the still owes \$500.00 in rent for December;
- on December 26, 2017 he posted a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the door of the rental unit;
- the Ten Day Notice to End Tenancy declared that the tenancy was ending because the Tenants had failing to pay rent; and

- the Ten Day Notice to End Tenancy declared that the rental unit must be vacated by January 15, 2018.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was submitted in evidence by the Landlord.

Analysis

Section 1 of the *Act* defines a landlord, in part, as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary I find that he is the sole owner of the rental unit and he has permitted the Tenants to occupy the rental unit. I therefore find that he is the Landlord as that term is defined by the *Act*.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary I find that the Tenants entered into a verbal tenancy agreement with the Landlord in which one of them was required to pay rent of \$1,000.00 for December of 2017 and the other was required to pay rent of \$500.00 for December of 2017.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary I find that the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that they must vacate the rental unit by January 15, 2018.

The hearing was scheduled for 9:00 a.m. on this date and by the time the teleconference was terminated the Tenants had not appeared. I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss the Application, without leave to reapply.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have viewed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was submitted in evidence and I am satisfied that it complies with section 52 of the *Act*, as it:

- is signed and dated by the Landlord;
- gives the address of the rental unit
- states the effective date of the notice,

- states that the grounds for ending the tenancy is unpaid rent; and
- is given on the form approved by the Residential Tenancy Branch.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants have the right to file an Application for Review Consideration, pursuant to section 89 of the *Act*, on one or more of the following grounds:

- a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
- a party has new and relevant evidence that was not available at the time of the original hearing; or
- a party has evidence that the decision or order was obtained by fraud.

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: April 11, 2018

Residential Tenancy Branch