



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on April 12, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- to cancel the Landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice); and,
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

The Landlord and one of the Tenants attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

The Tenants submitted two packages of documentary evidence. The Landlord acknowledged receiving the first package. However, the second package from the Tenants was submitted late (a couple days prior to the hearing). Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the evidence is late and was not properly disclosed to the Landlord, I will not consider the Tenants' late documentary evidence in this

hearing. I will only consider the first package sent in by the Tenants. The Tenant acknowledged receipt of the Landlord's evidence.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notices cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided testimony during the hearing with regards two different 10 Day Notices (for Non-payment of rent) as well as issues surrounding the 1 Month Notice for Cause. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. Given that my decision hinges on the first 10 Day Notice, I will focus on this evidence.

The tenancy agreement provided into evidence shows that the tenancy began on October 15, 2017. Rent is \$1,250.00 per month and is payable on the first of the month. The tenancy agreement also specifies that there is a ½ month rent charge due on October 15, 2017, for the first two weeks of the tenancy.

The Landlord stated that the Tenant moved in on October 16, 2017, and paid the security deposit of \$625.00 but never paid the rent for October 15-31, 2017, which was the first two weeks she moved in. The Landlord stated that the Tenant paid November, December and January rent, but never did pay for the first two weeks she moved in (\$625.00), despite making promises that she would. The Landlord stated that she gave the Tenant some time to pay, but after not receiving it for well over a month, she issued a 10 Day Notice on January 3, 2018, for \$625.00 in unpaid rent. The Tenant acknowledged receiving the 10 Day Notice on January 3, 2018.

The Tenant applied to dispute the 10 Day Notice from January 3, 2018, on February 7, 2018, after receiving a second 10 Day Notice on February 6, 2018. The Landlord issued the second 10 Day Notice because the Tenant also failed to pay for February 2018 rent, plus the \$625.00 she still owed from October 2017. The Tenant stated that after receiving the first 10 Day Notice on January 3, 2018, she did not make any further

payments to the Landlord. The Tenant stated she tried to make a payment on February 6, 2018, and was denied but the Landlord says this is not true.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

As per the signed tenancy agreement, I find the Tenants owed \$625.00 in rent for the period from October 15-31, 2017. I also find no evidence that the Tenants paid for this amount, even after receiving a 10 Day Notice.

I turn to the first 10 Day Notice, which the Tenant acknowledged receiving on January 3, 2018. This 10 Day Notice indicated that \$625.00 was still unpaid from October 2017. The consistent evidence before me is that the Tenant owed \$625.00 in outstanding rent (from October 2017) at the time the first 10 Day Notice was issued.

After receiving the first 10 Day Notice on January 3, 2018, the Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants paid this amount in full, or that they had the right to withhold this amount. Further, the Tenants did not apply to cancel this Notice until February 7, 2018, well after the allowable 5 day window. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. I hereby dismiss the Tenants' application to cancel the first 10 Day Notice.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated

by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the first 10 Day Notice issued by the Landlord on January 3, 2018, meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenants.

Given my findings on this matter, I find it is not necessary to look at the other Notices issued by the Landlord.

Conclusion

The Tenants' application is dismissed, in full, without leave to reapply.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 13, 2018

Residential Tenancy Branch