



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent, for emergency repairs and to recover the filing fee.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on March 17, 2018. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there emergency repairs to be completed?

Background and Evidence

This tenancy started on October 1, 2017 as a month to month tenancy. Rent is \$1,800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$900.00 on October 4, 2017. No condition inspection report was completed on move in.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated March 8, 2018. He served the Notice on March 9, 2018 by posting it on the door of the Tenants’ rental unit. The Effective Vacancy date on the Notice is March 18, 2018. The Landlord said the Tenants are living in the unit and the Landlord requested an Order of Possession for April 30, 2018 if the Tenant’s application is unsuccessful.

The Tenant said he agrees there is \$900.00 of unpaid rent from March, 2018. The Tenant continued to say he will pay the \$900.00 to the Landlord today and the Tenants are moving out of the rental unit by April 30, 2018. The Tenant added that he has started a legal action against the Landlord for hazardous materials on the property, but that issue is not under the jurisdiction of the Residential Tenancy Branch. The Tenant agreed to pay the unpaid rent and move out of the rental unit by April 30, 2018.

Analysis

Section 26(1) says 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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated March 8, 2018 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect April 30, 2018 after service of it on the Tenants.

Further as the tenancy is ending and the emergency repair issue will be heard in Supreme Court of British Columbia, I will not make a ruling on that matter.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the filing fee which they have already paid.

Conclusion

The Tenants' application is dismissed without leave to reapply.

An Order of Possession effective April 30, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced 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: April 18, 2018

Residential Tenancy Branch