



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 12, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 7, 2018 (the "10 Day Notice");
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by T.B. The Landlord attended the hearing on his own behalf and was accompanied by his brother, S.S. All in attendance provided a solemn affirmation at the beginning of the hearing.

No issues were raised during the hearing with respect to service and receipt of the notice of dispute resolution hearing or of the evidence upon which each of the parties intended to rely.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement?
3. Are the Tenants entitled to recovery the filing fee?

Background and Evidence

The Landlord testified that the original tenant, J.T., moved into the 2-bedroom, 1 bathroom rental unit on April 1, 2015. The tenancy agreement stipulates that rent in the amount of \$1,100.00 per month is due on the first day of each month. The original tenant paid a security deposit of \$550.00, which the Landlord holds. The Landlord stated emphatically that he rented the unit as a whole.

According to T.B., he moved into the rental unit on November 1, 2016, with the Landlord's knowledge. T.B. testified that the Tenants occupied one bedroom and J.T. occupied the other. All other areas in the rental unit were shared. T.B. acknowledged the total amount of rent due was \$1,100.00 per month and stated that the Tenants' share of rent was \$600.00 per month. This amount was paid to J.T., who paid the full amount due to the Landlord. However, J.T. vacated the rental unit in or about October 2017, without notice, leaving some of his belongings behind. The Tenants have continued to occupy the rental unit.

The Landlord testified rent was not paid when due on December 1, 2017, and on January 1, 2018. Accordingly, the Landlord issued the 10 Day Notice, naming J.T., the original tenant, and including the first name of T.B. The parties agreed the 10 Day Notice was served on and received by the Tenants on January 7, 2018. At that time, rent in the amount of \$2,200.00 was outstanding. According to the Landlord, the Tenants have made only partial payments totalling \$1,200.00.

In reply, T.B. did not dispute the Landlord's claims but stated that he cannot afford to pay rent in the amount of \$1,100.00 per month, and that the Tenants should only have to pay \$600.00 per month. He also suggested the Landlord had an obligation to find a roommate to occupy the second bedroom.

T.B. did not make any submissions with respect to the Tenants' request for an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement between the parties.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

I find that a verbal tenancy agreement existed between the parties. The Landlord was aware that the Tenants moved into the rental unit on November 1, 2016. In addition, I accept the Landlord's testimony that he rented the entire unit, not individual rooms in the unit. Further, I find the Tenants were aware that rent was due in the amount of \$1,100.00 per month, although they paid their share to J.T., who then paid the Landlord.

In addition, I find the 10 Day Notice was served on and received by the Tenants on January 7, 2018. Although the 10 Day Notice included T.B.'s first name, I find it is reasonable to amend the 10 Day Notice to include T.B.'s full name, pursuant to section 68 of the *Act*, because the Tenants now dispute the 10 Day Notice.

Despite being aware of the full amount of rent due, T.B. claimed the Tenants' ability to pay, the payment arrangement with J.T., and the Landlord's supposed obligation to find another occupant relieved the Tenants of their obligation to pay rent in full. I find these submissions to be unreasonable in the circumstances. Rent has not been paid when due and there is insufficient evidence before me that the Tenants had any right under the *Act* to deduct rent. Accordingly, I find that the Tenants' Application is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. The language in section 55 is mandatory. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I

find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an Order of 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: June 4, 2018

Residential Tenancy Branch