



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR/MT Landlord: MNRL/OPR/FFL

Introduction

On May 16, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for unpaid rent, dated May 3, 2018 (the “Notice”). On May 18, 2018 the Tenants submitted an Amendment and added a request for more time to cancel the Notice.

On May 16, 2018, the Landlords submitted an Application for Dispute Resolution under the Act to obtain an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlords’ Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlords and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenants testified that they received the documentary evidence from the Landlord.

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.

Preliminary Matters

At the beginning of the hearing, I confirmed with the parties that two Landlords and two Tenants should be on each Application. The Landlords and Tenants consented to the Applications being amended and pursuant to Section 64(3) of the Act, I amended the Applications to include both Landlords and both Tenants.

The Landlords initially applied for a Monetary Order for rent; however, testified that they have since received the unpaid rent for use and occupancy purposes only. Therefore, the Landlords are only applying for an Order of Possession and reimbursement for the Filing Fee. I amended the Landlords' Application pursuant to Section 64(3) of the Act.

Issues to be Decided

Tenants:

Should the Tenants be entitled to more time to cancel the Notice?
Should the Notice be canceled?

Landlords:

Should the Landlords receive an Order of Possession for the rental unit?
Should the Landlords be reimbursed for the Filing Fee?

Background and Evidence

The Landlords and the Tenants agreed that the month to month tenancy began on April 1, 2018 and that \$1,300.00 was due on the first of each month. The security deposit required was \$650.00 and the Landlords only collected \$300.00 of the security deposit.

The Landlords testified that the Tenants paid their first month's rent late and when the Landlords did not receive the May 2018 rent on time, they served the Notice on May 3, 2018 by leaving it in the Tenants' mailbox. The Landlords provided the Notice and Proof of Service as evidence.

The Landlords applied for Dispute Resolution on May 16, 2018 and stated that they received the rent for May and June on May 31, 2018. The Landlords testified and submitted a receipt as evidence that they collected the rent for use and occupancy only.

The Landlords stated that the Tenants are still in the rental unit, beyond the vacate date on the Notice, and the Landlords have requested an Order of Possession.

The Tenants testified that they received the Notice on May 3, 2018 or a couple of days later. They did not pay the rent or apply for Dispute Resolution within five days; however, began to negotiate with the Landlords to pay the rent at a later date, after the Landlords prompted them by text on May 8, 2018.

The Tenants paid the rent for May and June 2018, when they e-transferred \$2,600.00 to the Landlords on May 31, 2018.

The Tenants stated that they would like to stay in the rental unit and would be able to pay the rent on time in the future.

Analysis

Section 46 of the Act authorizes the Landlords to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenants receive the notice. The Tenants, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the Tenants do not pay the rent or make an Application for Dispute Resolution, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The Landlords testified that the Notice was served on the Tenants by leaving it in their mailbox on May 3, 2018. As the Tenants were unsure as to when they received the Notice, I find that the Notice was deemed served on the Tenants on May 6, 2018, in accordance with Section 90 of the Act.

Section 66 of the Act, permits an Arbitrator to extend the time limit for a Tenant to apply for Dispute Resolution in relation to a Landlords' Notice for non-payment of rent. The Tenants' Application to request more time requires the Tenants to provide evidence of exceptional circumstances as to why they could not pay the rent or apply for Dispute Resolution within five days of receiving the Notice. Despite the Tenants submissions that they were attempting to negotiate a later payment date, I find that the Tenants failed to provide sufficient evidence to justify not submitting their Application for Dispute Resolution while they were negotiating.

I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under Section 46 (4) of the Act. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on May 16, 2018.

The Tenants are still in the rental unit, beyond the end of their tenancy. As a result, I find that the Landlords' request for an Order of Possession should be granted.

As the Landlords' Application has merit, I find that the Landlords should be reimbursed for the \$100.00 Filing Fee.

I dismiss the Tenants' Application to cancel the Notice without leave to reapply.

Conclusion

I am granting the Landlords an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords have established a monetary claim, in the amount of \$100.00 as compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep \$100.00 from the Tenants' security deposit, in full satisfaction of the monetary claim.

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: July 3, 2018

Residential Tenancy Branch