



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a cancellation of a One Month Notice to End Tenancy and a 10-Day Notice to End Tenancy for Unpaid Rent.

The Landlords and Tenants, as noted in their signed tenancy agreement, all appeared for the scheduled hearing. The initial Application filed by the Tenants only included one of the two named Landlords, but it was confirmed at the hearing that there are two Landlords and the Application is amended in accordance with this. I find that the Notice of Hearing was properly served on June 7, 2018 as per section 89 of the Act, and that evidence was submitted by all parties in accordance with the Rules of Procedure published by the Residential Tenancy Board.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Are the Tenants entitled to a cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the Residential Tenancy Act (“Act”)?

Are the Tenants entitled to a cancellation of the 10-Day Notice to End Tenancy, pursuant to section 46 of the Act?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Background and Evidence

This tenancy began October 15, 2017 for a fixed term ending November 1, 2018. The monthly rent was set at \$1,400.00, payable on the first of each month. The security deposit of \$600.00 was paid to the Landlords. The Tenants entered into this tenancy agreement believing that the Landlords, who resided upstairs in the home, was the owner of the property. The Landlord states that he has written consent of the owner of the property to rent the basement suite to the Tenants.

Both parties agree that the rent was unpaid in January of 2018, resulting in a 10-Day Notice to End Tenancy for Unpaid Rent, and the Tenants caught up that payment to avoid eviction. Both parties also agree that the June 2018 rent is currently unpaid.

The Tenants state that they received a one month notice to move out in the form of a letter from their Landlord; they received this May 31st with an effective date of June 30th. At this point, upon receiving the letter, their understanding was that their Landlord was a renter as well, and was moving out in June of 2018. The Landlord provided contact information so that the Tenants living downstairs could perhaps enter into a new tenancy with the homeowner.

The Landlords state that it was their understanding that the homeowner was experiencing financial difficulties and needed to move into her house. The Tenants filed a real estate listing showing the rental house having been recently put up for sale.

The Tenants argue that the one-month notice is improper as it ought to have been a Two Month Notice to End Tenancy for Landlord's Use of Property as required under the legislation; they further argue that they would be entitled to one month's free rent under this type of notice.

Upon receiving the letter which would end their fixed term tenancy, the Tenants were concerned that they were being evicted by a Landlord who was not the homeowner; only then realizing the Landlord was not the homeowner, they did not pay him the June rent for fear that he would move out that month and keep their rent and security deposit.

The Tenants state that they contacted the homeowner and that she was prepared to negotiate a new tenancy agreement listing her as landlord, but as there was a dispute hearing scheduled for this Application, the parties believed they could only agree to pay rent to the homeowner for the month of July.

The Tenants state that the owner accepted payment of \$1,400.00 for the month of July so that they would not have to move out while this dispute was resolved. The Landlords argue that the homeowner has received no money, they question whether there is a new tenancy in existence, and that they were compelled to cover the June rent on the entire house to the homeowner on behalf of all renters, prior to moving out.

Neither party submitted evidence from the homeowner in support of their position. The Landlord asks for an Order of Possession and if granted, he will turn the property over to the homeowner as he is no longer involved with the property.

The Landlord issued a 10-Day Notice to End Tenancy on June 3, 2018 for Unpaid Rent. This was posted on the door and evidence of this was submitted. The Tenants filed this Application on June 7, 2018, asking that the two notices to end the tenancy be cancelled and that they be allowed to remain in the house so that they can negotiate a new tenancy with the homeowner.

Analysis

Under section 2 of the Act, a "landlord" includes an owner of the rental unit, but also "*a person, ... who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement...*" I am satisfied from the evidence before me that there is a valid tenancy between the parties. The Landlords may not be the registered homeowner, but it is clear from the testimony that they had authority as agent to rent out the basement suite to the Tenants and to collect rent. There is a written tenancy agreement between the parties that appears to be valid and binding, which was submitted into evidence.

One Month Notice to End Tenancy:

I have reviewed the May 31, 2018 letter provided by the Landlord to the Tenants and find that it fails to meet the requirements of section 52 in form and in content, which states:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

...

(e) when given by a landlord, be in the approved form

The typed notice provided by the Landlords to the Tenant was not in the approved form under the Act. It simply states, *"Please accept our 1 month notice that you will need to vacate (address redacted) as of June 30th, 2018. The landlord has expressed that if you wish to apply for tenancy to please reach out to her directly."* It does not state the grounds for ending the tenancy. As the notice fails to comply with section 52 of the Act, I am granting the Tenants' request and cancelling that notice, which is of no force or effect.

10-Day Notice to End Tenancy:

The Tenants were clearly reluctant to pay the June 1st rent as they now understood that their Landlord was moving out and another person owned the property, who was putting it up for sale and/or moving in. They questioned whether or not the Landlords had the homeowner's consent to rent them the basement suite and they had concerns about whether their June payment and security deposit should go to their Landlords or to the homeowner, who they then contacted.

By not paying the June rent, the Tenants put themselves into a position whereby this Landlord was able to serve a 10-Day Notice to End Tenancy on June 3rd. Section 46 of the Act allows a landlord to serve a notice to end a tenancy if rent is unpaid on any day after it is due. Under that section of the Act, a tenant has five days from the date of being served a 10-Day Notice to End Tenancy for Unpaid Rent to either pay the rent arrears or file a dispute notice. The Notice was posted on the door on June 3, 2018, and under section 90 of the Act, it is deemed to be served three days following, on June

6, 2018. The Tenants filed their Application to dispute the notices on June 7, 2018, within the required timelines for each.

There is undisputed evidence that the June rent is unpaid. Accordingly, the Notice to End Tenancy for Unpaid Rent is valid and binding on the Tenants. I find that the Notice will not be cancelled and that the Tenants' request is dismissed.

Section 55(1) of the *Act* states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's application is dismissed. As I have made a finding that the Notice complies with Section 52 of the Act and the Tenants' Application to the cancel the 10-Day Notice is dismissed, the Landlord must be granted an Order of Possession.

The Tenants must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

For the reasons set out above, the Tenants' Application to cancel the 10-Day Notice to End Tenancy is hereby dismissed without leave to re-apply. The One Month Notice to End Tenancy is cancelled and of no force or effect.

I hereby grant an Order of Possession in favor of the Landlord effective 2 days after service on the Tenants. This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the Tenants fail to comply with it.

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 25, 2018

Residential Tenancy Branch