



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDCT, ERP, RR

Introduction

The tenants submitted an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2018 (“10 Day Notice”), for an amended monetary claim of \$3,579.21 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for emergency repairs for health or safety reasons, and for a rent reduction.

The tenant SH (“tenant”) and an agent for the landlord RB (“agent”) attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided; however, I have only referred to the relevant evidence below.

Neither party raised any concerns regarding the service of documentary evidence. The landlord confirmed having been served with the tenants’ documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The agent confirmed that the landlord did not serve any documentary evidence.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing. The parties confirmed their understanding that the decision and any orders would be emailed to the landlord and that the tenants would be sent the decision by regular mail.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is their application to set aside the 10 Day Notice and was the reason the tenants received an expedited hearing. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 10 Day Notice at this proceeding. I will determine later in this decision what portions of the remainder of the tenants’ application are dismissed with leave to reapply, if any.

Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on July 1, 2018 and that monthly rent is \$995.00 per month and due on the first day of each month. A copy of the tenancy agreement was not submitted in evidence.

The tenant testified that he received the 10 Day Notice dated August 3, 2018 posted to his door on August 5, 2018. The tenants disputed the 10 Day Notice on August 7, 2018. The amount listed as owing was \$995.00 due August 1, 2018. The effective vacancy date listed on the 10 Day Notice is listed as August 13, 2018.

The tenant admitted that he has not paid rent for August or September 2018 and claims he did not pay rent due to lack of cable in his room and that a lock is not on his door. The tenant admitted that he has not written to the landlord to request emergency repairs.

The agent did not agree with the tenants’ claims about lack of cable and denies having received a request in writing for emergency repairs. The parties confirmed that no money has been paid for use and occupancy for September 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant confirmed under oath that he did not pay August or September 2018 rent due to lack of cable and there being no lock on his door yet admitted he has not written to the landlord to seek emergency repairs in writing. The effective vacancy date on the 10 Day Notice is listed as August 13, 2018 which automatically corrects under section 53 of the *Act* to August 15, 2018 as the 10 Day Notice was received on August 5, 2018 according to the tenant. The tenants did dispute the 10 Day Notice under the five day timeline under the *Act*.

Section 26 of the *Act* requires that the tenants pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenants failed to pay rent when it was due.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy],**
and

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

I dismiss the tenants' application to cancel the 10 Day Notice as the tenant has confirmed that rent was not paid when it was due as required by section 26 of the *Act*. I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act* and as a result, I grant the landlord an order of possession effective two (2) days after it is

served on the tenants. I find the tenancy ended on August 15, 2018 which is the corrected effective date of the 10 Day Notice.

As the tenancy has ended, I only grant the tenants leave to reapply for monetary compensation which was severed above pursuant to Rule 2.3 of the Rules. The remainder of the tenants' application is dismissed without leave to reapply as I find the remainder to be moot as the tenancy has ended.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The tenancy ended on August 15, 2018 and the tenants have been overholding ever since.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 21, 2018

Residential Tenancy Branch