



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT

Introduction

On August 27, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing package by registered mail and by hand, and the Landlord confirmed receipt of this. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not serve her evidence to the Landlord as she was no longer pursuing claims in this hearing that did not pertain to the Notice. As well, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

The Landlord advised that he served his evidence to the Tenants in person on September 29, 2018 and the Tenant confirmed receiving these packages. As service of the evidence complied with Rule 3.15 of the Rules of Procedure, I have accepted and considered this evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on September 15, 2016 and that rent was established at \$2,500.00 per month, due on the first day of each month. A security deposit of \$1,250.00 was paid.

The Landlord advised that the Tenant did not pay August 2018 rent on August 1, 2018 and that rent was also outstanding for previous months. He stated that he served the Notice to the Tenants by posting it on the door on August 23, 2018 which indicated that \$2,500.00 was outstanding on August 1, 2018. The Notice indicated that the effective end date of the Notice was September 3, 2018. He stated that the Tenants paid \$240.00 on August 24, 2018, \$300.00 on August 29, 2018, and \$1,960.00 on September 20, 2018.

The Tenant confirmed that she received the Notice on August 23, 2018. She stated that they had suffered through some personal issues and were unable to pay the rent. She confirmed that rent was in arrears, that August 2018 rent was not paid in full, and that she did not have a valid reason pursuant to the *Act* that permitted her not to pay the rent in full. She did confirm the partial rent payments that the Landlord outlined.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants received the Notice on August 23, 2018. According to Section 46(4) of the *Act*, the Tenants have 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on August 28, 2018, the Tenants must have made this Application or paid the rent arrears in full by this day at the latest. However, the undisputed evidence is that the Tenants made their Application on August 27, 2018 and that they did not pay the rent in full by August 28, 2018.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlord **two days after service of this Order** 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.

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: October 15, 2018

Residential Tenancy Branch