



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR OLC ERP RP LAT FFT

Introduction

This hearing dealt with the tenants' 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 September 28, 2018 ("10 Day Notice"), to cancel a 1 Month Notice to End Tenancy for Cause dated September 11, 2018 ("1 Month Notice"), for an order for emergency repairs for health or safety reasons, for an order for regular repairs to the unit, site or property, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

The tenant AP ("tenant"), the landlords, and two agents for the landlord ("agents") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing. I have considered only the documentary evidence that was served in accordance with the Residential Tenancy Branch Rules of Procedure ("Rules"). In addition, only evidence relevant to the issues and my findings below have been described in this decision.

Regarding documentary evidence, the tenant stated that the photographic evidence was not served on the landlord which the landlord confirmed during the hearing. As a result, the tenants' photographic evidence was excluded from the hearing as it was not served in accordance with the Rules. The tenant confirmed that the landlord's documentary evidence was received and reviewed by the tenants prior to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to set aside the 10 Day Notice and the 1 Month Notice. 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, the 1 Month Notice and the recovery of the filing fee at this proceeding. I will determine later in this decision whether I dismiss the remainder of the tenants' application with or without leave to reapply.

The parties confirmed their email addresses at the outset of the. The parties were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2018. Monthly rent is \$1,600.00 and due on the first day of each month.

The tenant confirmed receiving the 10 Day Notice on September 29, 2018. The tenants disputed the 10 Day Notice within the required 5 day timelines under section 46 of the *Act* by filing to dispute the 10 Day Notice on October 2, 2018. The 10 Day Notice states that \$1,600.00 in unpaid rent was due on September 1, 2018. The tenant testified that \$800.00 in rent was paid on September 1, 2018 and that the tenants withheld the other half of rent due to photographs of repairs they were seeking from the landlords. The tenant confirmed that they did not write to the landlords or submit any request for repairs in writing before withholding rent. In addition, the agent referred to a series of text messages which the tenant confirmed was from the male tenant and I advised the parties that the texts did not support that half of the monthly rent was paid on September 1, 2018 as claimed by the tenant during the hearing.

In addition to the above, the tenant confirmed that the tenants have not paid rent for October or November of 2018 to the landlords.

The effective vacancy date listed on the 10 Day Notice was October 7, 2018 which has passed. The tenants continue to occupy the rental unit. The landlords are seeking a two-day order of possession.

Based on the above, I do not find it necessary to consider the 1 Month Notice which will I will describe further below.

Analysis

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

10 Day Notice – The landlords issued a 10 Day Notice dated September 28, 2018 which the tenant confirmed receiving on September 29, 2018. Although the tenants disputed the 10 Day Notice on time by filing an application on October 2, 2018, I find the tenants have failed to provide sufficient evidence that they had a right to withhold any amount of rent under the *Act* and therefore, I find the 10 Day Notice to be valid. Therefore, **I dismiss** the tenants' application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice issued by the landlords which had an effective vacancy date of October 7, 2018 as it is valid.

I find the tenancy ended on October 7, 2018.

Given the above, I dismiss the remainder of the tenants' application **without leave to reapply as the tenancy has ended**. 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]

Pursuant to section 55 of the *Act*, and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I must grant the landlords an order of possession once I have dismissed the tenants' application to dispute the 10 Day Notice or have upheld the 10 Day Notice. Therefore, **I grant** the landlords an order of possession for unpaid rent **effective two (2) days after service on the tenants**. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find it was not necessary to consider the 1 Month Notice or the remainder of the application as the tenancy has ended.

I do not grant the filing fee as a result.

Conclusion

The tenants' application fails and is dismissed in full without leave to reapply.

The 10 Day Notice is upheld and the tenancy ended on October 7, 2018.

The landlords have 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 enforced in the Supreme Court of British Columbia.

I do not grant the filing fee.

The decision will be emailed to both parties as indicated above.

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: November 14, 2018

Residential Tenancy Branch