



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHLAND MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing this Application.

The Tenant who attended the hearing (hereinafter referred to as the Tenant) stated that in November of 2018 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy were personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and the Notice to End Tenancy was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree the monthly rent of \$1,034.00 is due on the first day of each month and that no rent was paid for November of 2018.

The Tenant stated that:

- this tenancy began many years ago;
- he has always been given one month free rent for every twelve months he occupies the rental unit;

- he that he does not know if the free rent is dependant on signing a one year lease;
- the last time he signed a lease was in 2016;
- the previous manager told him the free rent incentive was still in place;
- he was never told the incentive would be discontinued;
- he received the Ten Day Notice for Unpaid Rent on November 14, 2018, which declared that he must vacate the rental unit by November 28, 2018; and
- he has given notice to end the tenancy on December 31, 2018.

The Agent for the Landlord stated that:

- this tenancy began many years ago;
- in the past the Landlord was giving the 13th month free to tenants who signed a one year lease;
- 2016 was the last year that incentive was offered to tenants;
- in 2016 the Tenant signed a one year lease and was granted a free month's rent on the basis of that lease;
- the Tenant has not signed a new lease since 2016 and is not, therefore, entitled to a free month's rent;
- he understands the previous manager told tenants the practise would be discontinued; and
- on November 14, 2018 he posted a Ten Day Notice for Unpaid Rent on the Tenants' door, which declared that he must vacate the rental unit by November 28, 2018.

Analysis

On the basis of the undisputed evidence I find that when the Tenants signed a lease in 2016 they became entitled to a free month's rent on the basis of signing that lease. I find that there is insufficient evidence to conclude that the Tenants were entitled to an additional free month's rent for any period after the signing of that lease.

In concluding that there was insufficient evidence to conclude that the Tenants were entitled to an additional free month's rent for any period after the signing of the lease in 2016 I was heavily influenced by the fact the lease was not submitted in evidence. In the absence of the lease I am simply left with the Tenants' interpretation of the term regarding the free rent and the Landlord's interpretation of the term, which are in conflict.

I find it entirely possible that the free rent is contingent on the signing of the lease, as the Landlord contends, as that is an incentive that is commonly offered by Landlords.

In adjudicating this matter I have placed little weight on the Tenant's testimony that the previous manager told him the free rent incentive was still in place. I find that this testimony was disputed by the Agent for the Landlord and is uncorroborated hearsay evidence, which is of limited value.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the absence of evidence that convinces me the Tenants had the right to withhold rent for November of 2018, I find that they were required to pay rent for that month.

Section 46(1) of the *Act* authorizes a landlord 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 tenant receives the notice. As rent for November has not been paid and the Landlord served the Tenants with a Ten Day Notice to End Tenancy, I find that the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act*. I therefore dismiss the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenants have failed to establish the merits of the Application for Dispute Resolution and I therefore dismiss the application to recover the fee for filing the Application.

Conclusion

I grant the Landlord an Order of Possession that is effective on **December 31, 2018**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: December 21, 2018

Residential Tenancy Branch