



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55;
- an order regarding the tenants' dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Tenant F.G. (the tenant) indicated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package while the tenant acknowledged receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with each other's documents.

The tenant confirmed that they received a 10 Day Notice on October 23, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with 10 Day Notice on October 23, 2018.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order regarding the dispute of an additional rent increase by the landlord?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to authorization to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on July 01, 2016, with a monthly rent of \$525.00, due on the first day of each month.

A copy of the signed 10 Day Notice, dated October 23, 2018, and identifying \$725.00 in unpaid rent with an effective date of November 03, 2018, was included in the evidence.

The tenant testified that the landlord has illegally increased the rent from \$525.00 to \$725.00. The tenant stated that they paid the monthly rent to the landlord's son on October 29, 2018, in the amount of \$525.00 and that no receipt was given. The tenant submitted that they paid another \$525.00 to the landlord's son on November 30, 2018, with no receipt provided at that time either. Tenant G.J. stated that she saw her partner go upstairs to pay the rent.

The landlord testified that no rent has been received from the tenants since the 10 Day Notice was issued to the tenants. The landlord testified that the amount on the 10 Day Notice is for rent that has not been paid in the past, in addition to the monthly rent for October 2018, and that there has been no rent increase.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on October 23, 2018, I find the tenant had until October 28, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears. As October 28, 2018, is a day that the Residential Tenancy Branch is not open, the tenant had until the next business day on October 29, 2018, to dispute the 10 Day Notice.

I find the tenant submitted their Application on October 30, 2018, which is not within the five day time limit permitted under section 46 (4) the Act.

I further find that the tenants did not provide any documentary evidence of rent being paid within the five days allowed by the Act. I find that Tenant G.J. stated that she saw the tenant go upstairs to pay the rent but did not say that she actually witnessed the rent being paid.

Having reviewed the evidence and based on a balance of probabilities, I accept the landlord's testimony that no rent has been received from the tenants since the 10 Day Notice was issued; however, even if the tenant had paid the monthly rent on October 29, 2018, as they testified, I find that this is not within the five day time limit permitted under section 46 (4) of the Act as the tenants were required to pay the monthly rent on or before October 28, 2018, for a 10 Day Notice received on October 23, 2018.

For the above reasons, the tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply

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Section 55(1) of the Act provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the

Act. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

I find that the landlord confirmed that the monthly rent is \$525.00 as it appears on the tenancy agreement and for this reason I dismiss the tenants' application to dispute an additional rent increase, without leave to reapply.

As this tenancy ending, I find that the tenants' Application to have the landlord comply with the *Act* is no longer applicable and it is dismissed, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee for this Application, without leave to reapply.

Conclusion

The tenants' Application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or any occupant on the premises 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: December 06, 2018

Residential Tenancy Branch