



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

Two of the Landlords and one of the Tenants were present for the teleconference hearing. The parties were affirmed to be truthful in their testimony. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenants and a copy of the Tenants’ evidence. Although the Landlord stated that only one package was received, instead of each respondent being served as required by the *Residential Tenancy Branch Rules of Procedure*, the Landlords confirmed that they each had a chance to review the information. The Tenant confirmed receipt of a copy of the Landlords’ evidence. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

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

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2015 for a monthly rent of \$1,390.00, due on the first day of each month. A security deposit of \$695.00 and a pet damage deposit of \$695.00 were paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The Landlord stated that current monthly rent is \$1,445.60, while the Tenant stated that he did not agree with the rent increase and rent should still be \$1,390.00 per month.

On November 6, 2018, the Landlords served the Tenants with a 10 Day Notice by posting it on their door. The Tenant confirmed receipt of the 10 Day Notice on November 6, 2018 and applied to dispute the notice on the same day.

The 10 Day Notice was submitted into evidence and states that \$1,445.60 was not paid as due on November 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as November 16, 2018.

The Landlord stated that they have not received any rent for November or December 2018. The Tenant was in agreement that rent was not paid for November 2018 and stated that they are entitled to a free month due to receiving a Two Month Notice, which is why they believe that December 2018 rent is not due.

The parties testified as to a previous hearing regarding the Two Month Notice in which they came to a settlement agreement to end the tenancy on January 31, 2019. The decision regarding the settlement agreement, dated August 24, 2018, was submitted into evidence and confirms that an Order of Possession was issued for January 31, 2019.

The Landlords stated that they are willing to provide until December 31, 2018 for the Tenants to move.

Analysis

Section 46(4) of the *Act* states that a tenant has 5 days in which to pay the rent owing or apply to dispute the notice. As the Tenants applied on November 6, 2018, the same day they received the notice, they applied within the timeframe provided under the *Act*. As such, I find that the matter before me is whether the 10 Day Notice is valid.

As stated in Section 46(1) of the *Act*, a 10 Day Notice may be given if rent is unpaid on any day after the day it is due. As rent is due on the first day of each month, and both parties agreed that rent for November 2018 was not paid, I find that the Landlords had cause to serve the Tenants with the 10 Day Notice. Despite the parties' disagreement as to the amount of rent owing for November 2018, I accept the testimony of both parties that no amount of rent was paid for November 2018.

As the Tenant agreed that they have not paid rent for November 2018, I find that the 10 Day Notice was not cancelled through payment of the rent within 5 days and is therefore upheld. The Tenants' application is therefore dismissed, without leave to reapply.

In accordance with Section 55(1) of the *Act*, when a tenant's application to dispute a notice to end tenancy is dismissed, the Landlord must be granted an Order of Possession, if the notice complies with Section 52 of the *Act*. As I find that the 10 Day Notice dated November 6, 2018 complies with Section 52, I grant the Landlord an Order of Possession. I accept that the Landlords are willing to provide until December 31, 2018 and therefore issue the Order of Possession for 1:00 pm on this date.

Conclusion

The Tenants' application to dispute the 10 Day Notice is dismissed, without leave to reapply. I grant an Order of Possession to the Landlord effective **on December 31, 2018 at 1:00 pm**. This Order must be served 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: December 14, 2018

Residential Tenancy Branch