



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing dealt with the tenants' applications to dispute a *1 Month Notice to End Tenancy for Cause* (1 Month Notice) and a *10 Day Notice to End Tenancy for Unpaid Rent* (10 Day Notice) under the *Residential Tenancy Act*, as amended. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural matters

The landlord confirmed receipt of the two applications filed by the tenants.

Upon hearing from both parties as to service of the Notices to End Tenancy, I determined the tenants filed their application to dispute the 10 Day Notice outside of the time limit for doing so, as set out below.

Where a tenant receives a 10 Day Notice, the tenant has five days to pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice. The landlord's son testified and the tenant referred to by initials MH confirmed that the 10 Day Notice was personally served upon her on November 16, 2018 meaning the tenants had until November 21, 2018 to either pay the rent or file an Application for Dispute Resolution to dispute the Notice. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit.

The tenants filed an Application at a Service BC office on November 22, 2018 which is beyond their five day time limit.

Both parties confirmed that the tenants did not pay the outstanding rent for November 2018 and the tenants did not pay any rent for December 2018. As such, I am satisfied the tenancy has not been reinstated.

The tenant stated the rent has not been paid because the tenants do not have the money to pay it. Such circumstances are not a legal basis to not pay rent that is otherwise payable so there would have been no basis to cancel the 10 Day Notice even if the tenants had disputed the Notice within time.

In light of the above, I informed the parties that I was satisfied that the tenancy has ended for unpaid rent and it was unnecessary to further consider the tenants' application to dispute the 1 month Notice. Both parties were in agreement and I dismissed both of the tenants' applications.

Discussion ensued as to when the tenants will vacate the rental unit. A mutual agreement was not reached.

Having dismissed the tenants' applications, I provide the landlords with an Order of Possession pursuant to section 55(1) of the Act, which provides:

- 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.

In this case, I am satisfied that the 10 Day Notice meets the form and content requirements of section 52 of the Act and having dismissed the tenant's application to dispute it, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

During the hearing the landlord stated the landlord is agreeable to an Order of Possession effective on December 31, 2018 considering the tenants have not paid rent or utilities for the past two months. I find the landlord's request reasonable and to give

the tenants more time to move out would be unduly prejudicial to the landlords. Therefore, I provide the landlords with an Order of Possession effective at 1:00 p.m. on December 31, 2018 to serve and enforce upon the tenants.

Conclusion

The tenants' applications are dismissed. The landlords are provided an Order of Possession effective at 1:00 p.m. on December 31, 2018 to serve and enforce upon the tenants.

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 18, 2018

Residential Tenancy Branch