



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI COMMERCIAL OKANAGAN
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, OLC

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants sought the following remedies:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46 of the Act;
2. an order for the landlord to make emergency repairs, pursuant to section 62 and 32 of the Act; and,
3. an order for the landlord to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement.

A dispute resolution hearing was convened at 1:30 P.M. on January 31, 2019 and the landlord's agent attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision. I note that the only documentary evidence submitted was a copy of the Notice.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to an order for the landlord to make emergency repairs?
4. Are the tenants entitled to an order for the landlord to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement?

Background and Evidence

The landlord's agent testified that the tenancy commenced on January 1, 2018. Monthly rent is \$1,500.00. A subsequent agreement was that the rent was for \$1,750.00.

The Notice was issued on December 13, 2018 and served personally by the landlord's agent on an adult who apparently resides with the tenants (the adult daughter of the tenants). The Notice indicated that overdue rent in the amount of \$2,800.00 was owing and due on December 1, 2018. The tenants currently owe \$4,550.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In cases where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord's agent testified and provided documentary evidence to support their submission by way of the Notice, that the tenants did not pay rent when it was due. There is no evidence before me establishing that the tenants had a right under the Act to deduct some or all of the rent.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find the Notice issued by the landlord on December 13, 2018 complies with the requirements set out in section 52. As such, the landlord is granted an order of possession of the rental unit.

Conclusion

I dismiss the entirety of the tenants' application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: January 31, 2019

Residential Tenancy Branch