



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC ERP LAT

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 section 46;
- an order that the landlord perform emergency repairs pursuant to section 33;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- an order restricting the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant CG (the "tenant") primarily spoke on behalf of both co-tenants.

As both parties were present service of documents was confirmed. The parties each testified that they had received the other's materials. Based on the testimonies I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant testified that since filing the application they have adopted the surname of their spouse and requested the name be changed accordingly. The landlord did not object and the name change is reflected in this decision.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Should the landlord be ordered to make emergency repairs?

Should the landlord's right to enter the rental unit be restricted?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The parties agreed on the following facts. This fixed-term tenancy began in September 2018. The monthly rent is \$850.00 payable on the first of each month. The tenants did not pay the December rent by the first and a 10 Day Notice dated December 6, 2018 was issued by the landlord.

The tenant testified that they informed the landlord that they could not pay the rent on the 1st. The tenant submitted into testimony a text conversation with the landlord where the landlord responds to the tenant's notice that they would not pay the rent by the due date. The landlord responds:

Wonderful no problem. I will just tell my mortgage people that this months payment will be late. I am sure they will be more than happy to give me an extention on my payment. And land taxes I am sure will not forclose on me as od dec 3. So Again no problem

The tenant testified that they made attempts to pay the rent on December 13, 2018 but the landlord refused to accept payment. The tenant gave evidence that the rental unit is in a state of disrepair and requires work to be done.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, I find that the tenant received the 10 Day Notice on December 6, 2018, and filed a notice of dispute application on December 7, 2018 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The

parties agree that the December, 2018 rent in the amount of \$850.00 was not paid by the 1st.

The tenant submits that they informed the landlord that they did not have the means to pay. Informing the landlord of their intent to breach the tenancy agreement does not give rise to the right to late payment. I find that the response provided by the landlord is not an agreement to allow late payment. While the text of the message shows the landlord saying “wonderful no problem”, I find that any reasonable reading would see that the message is dripping with obvious sarcasm. I find that there was no agreement between the parties to allow late rent payment.

For the above reasons I dismiss the tenant’s application to cancel the 10 Day Notice.

Section 55 of the *Act* provides 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

- (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.

I have dismissed the tenant’s application, and I find that the landlord’s 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As I have found the 10 Day Notice to be effective and this tenancy is ending I find it unnecessary to make a finding on the remaining portion of the tenant’s application.

I also note that while the landlord has given evidence that there is a rental arrear the landlord has not filed an application for a monetary award and I make no findings on the rental arrear.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone 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: January 31, 2019

Residential Tenancy Branch