Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bcIMC Realty Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on December 20, 2018. The tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") pursuant to section 46 of the Act.

A dispute resolution hearing was convened and the landlord's agent and an agent for one (M.F.), but not both, of the tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant's agent explained that he was attending the hearing more as a family friend of tenant M.F., and that he did not know the co-tenant, N.H. The parties did not raise any issues in respect of the service of documents or evidence.

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

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.

Preliminary Issue: Adjournment Request by Tenants

The tenant's agent requested an adjournment of the hearing on the basis that the tenant was unavailable due to a difficult-to-get medical appointment regarding the tenant's medical condition. In support of this request was a copy of the tenant's medical history and a note from a physician noting that the tenant would be unavailable to attend the hearing.

The landlord's agent, while both understanding and sympathetic toward the tenant's medical condition, commented that the landlord was opposed to any adjournment request.

While the doctor's note and the tenant's agent's submissions would be sufficient grounds to adjourn a hearing if the tenant was the sole tenant on the tenancy, in this case, the other tenant (N.H.) is a co-tenant, and as such is legally responsible for the tenancy and the tenants' obligations under the Act. Either or both tenants are jointly responsible for the tenancy. Likewise, either or both tenants are legal parties to a dispute resolution proceeding. There were no submissions made or evidence to explain why the co-tenant could not have attended the dispute resolution hearing. Conversely, there were no submissions made or evidence to establish grounds for adjourning the hearing due to N.H.'s unavailability to attend the hearing.

Given the above, pursuant to Rule 7.8 of the *Rules of Procedure,* I find that there are insufficient factors to permit me to grant and adjournment.

Issues

1. Are the tenants entitled to an order cancelling the Notice?

2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord's agent testified that tenant N.H. lived in the rental unit for quite some time prior to tenants N.H. and M.F. commencing a new tenancy on November 1, 2017. Monthly rent is currently $1,760.00 which is due on the first of the month. In addition, there is a monthly parking fee of $135.00. The tenant N.H. paid a security deposit of $730.00 in 2011, and there is no pet damage deposit.
On December 13, 2018, the landlord's agent issued the Notice for unpaid rent and posted it on the tenant' door on that date. A copy of the Notice was submitted into

evidence. Service of the Notice was witnessed, and the landlord submitted a copy of a Proof of Service document in support of their claim.

At the very start of February 2019, the tenants paid the landlord $3,900.00, but according to the landlord's agent there is still $1,834.00 (including the parking fee) that remains unpaid for February's rent. The $3,900.00 was accepted by the landlord on a use and occupancy only basis. She noted that if the tenant was prepared to pay on time that the landlord would not have to keep issuing notices to end the tenancy; she commented that while she has nothing against the tenant, the landlord wants to be paid rent on time.

The tenant's agent submitted that the tenant has had great difficulty paying rent due to his medical condition and injuries, and that he "feel horrible" about the situation. He is "doing everything he can to get caught up," and that "he gets paid Friday [February 8, 2019]" when he intends to fully get caught up. The tenant's agent further noted that "this is his home" and that he hopes that I, as the arbitrator, understands the situation.

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. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, 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 (which they did not). The Notice also explained that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution (which they did).

The landlord's agent testified, and provided documentary evidence to support their submission, that the tenants did not pay rent when it was due. The tenant's agent did not dispute that the tenant M.F. did not pay rent, but that he was doing his best to get

caught up given his medical issues. There is insufficient evidence before me that the tenants had a right under the Act to deduct some or all of the rent.

Taking into consideration all the 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.

As the landlord has met their onus of proving the ground on which they issued the Notice, I dismiss the tenants' application for an order cancelling the Notice without leave to reapply. The Notice dated December 13, 2018 is upheld.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application 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 reads as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> > (a) be signed and dated by the landlord or tenant giving the notice,
> > (b) give the address of the rental unit,
> > (c) state the effective date of the notice,
> > (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> > (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> > (e) when given by a landlord, be in the approved form.

Having review the Notice issued by the landlord I find that is complies with all the requirements set out in section 52 of the Act. Accordingly, I grant an order of possession to the landlord.

Conclusion

The tenants' application is dismissed 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: February 4, 2019

Residential Tenancy Branch