



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR ERP FFT MT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 4, 2018 ("10 Day Notice"). The Tenants also applied for an order for emergency repairs, to recover the cost of their filing fee, and for more time to cancel the 10 Day Notice; however, the Tenants did not raise the issue of needing more time in the hearing.

The Tenants and the Agent for the Landlord, JG (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. The Parties had the hearing process explained to them and were provided an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; however, I have only referred to evidence that is consistent with the Rules of Procedure and the evidence relevant to the issues in this matter.

Neither Party raised any concerns regarding the service of documentary evidence.

Preliminary Matters

Change in Landlord

In the hearing, the Parties indicated that the rental unit had been sold by the owners with whom the Tenants had a tenancy agreement. In the Application filed by the Tenants, the Landlord is different from the one who signed the tenancy agreement. The Tenants said:

On Sept 30, 2018, [S.E.] (previous property manager) came over at 3pm and told us that the house was sold and that the new owner was taking possession as of Oct 3, 2018. No one came by on that day or anytime after that until Oct 25th at

about 4pm in which a man by the name of [W.W.] showed up stating that he wanted the rent for Oct.

[reproduced per original]

The Tenants said their first introduction to the new owner “was on October 25, 2018, when a gentleman knocked on our door” and gave them his card, saying that he was the new property manager. The Tenants said this man told them that he was there to collect rent for October; however, the Tenants said they did not think that a business card was sufficient identification to “hand a cheque over to somebody.”

The Tenants said the rental unit was never inspected by the new owner before it was sold and that no one introduced them to the new owner. They said there was never a real estate agent to introduce the new owners to them and they did not know who these people were.

The Agent said he cannot say much about what happened prior to October 2, 2018, but that the new Landlord became involved, because the Tenants did not pay rent for October and November 2018. He added that they did not pay rent for December 2018 or January 2019, either.

The Agent said that on November 5, 2018, he gave the Tenants his business card and explained that he was the new Landlord. He said “no one reached out to me” about repairs or anything else, and the Tenants did not pay rent that was due.

The Tenants did not indicate why they were confident enough in the new Landlord’s identity to name him in their Application, but not to pay the rent that they owed to him. Based on all the evidence before me, overall, I find it more likely than not that the Tenants were aware enough of the identity of their new Landlord to pay their rent owing.

Multiple Claims

In their Application the Tenants sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the Tenants’ claims regarding the

mould in the rental unit are not sufficiently related to the 10 Day Notice or continuation of the tenancy; as a result, I exercise my discretion to dismiss the following claim by the Tenants with leave to reapply:

- an order for emergency repairs.

As a result, the hearing proceeded based only on the Tenant's Application to cancel a 10 Day Notice.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on the 10 Day Notice, pursuant to section 55 of the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee under section 72 of the *Act*?

Background and Evidence

The Parties testified that the tenancy began on May 1, 2018. They agreed that the terms of the tenancy included a monthly rent of \$2,000.00 payable on the first day of each month, and that the Tenants paid a security deposit of \$1,000.00. The Parties agreed that the Tenants continue to reside at the rental unit.

The Parties agreed that the Tenants had not paid any rent from October 1, 2018 through to and including January 1, 2019. The Tenants said that this is because of the Landlord's failure to repair the mould in the rental unit, and because they did not know their new Landlord.

The Tenant submitted into evidence a copy of the 10 Day Notice that was signed on November 4, 2018. The Parties agreed that the Agent served the 10 Day Notice to the Tenants in person on November 5, 2018, for failing to pay \$4,000.00 in rent.

Analysis

As the Parties agreed that the Agent served the 10 Day Notice to the Tenants in person on November 5, 2018, I find that the Tenants were personally served with the 10 day Notice on this date. The 10 Day Notice required the Tenants to move out of the rental unit by November 14, 2018. Technically, the Tenants had 10 days to move out of the

rental unit from the date they were served with it, if they did not comply with one of the conditions therein; this means that the vacancy date would have been November 15, 2018, not November 14. However, as the Tenant chose to dispute the 10 Day Notice, this error is not relevant to the legitimacy of the 10 Day Notice; further, such errors are automatically corrected to comply with the *Act* pursuant to section 53 of the *Act*.

Section 33 of the *Act* sets out a tenant's obligations for when they can withhold rent for "emergency repairs". The Act states that "emergency repairs" are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Section 33 goes on to set out how a tenant may deal with emergency repairs, including the option of paying for them, themselves and deducting the amount from rent.

If the Tenants had followed the steps set out in the Act for having emergency repairs done, themselves, they may be in a position to deduct the amount they paid from the rent, if the Landlord did not first reimburse them for the costs. The evidence before me from the Parties is that the Tenants did not follow the steps set out in section 33 of the Act for dealing with emergency repairs. Accordingly, the Tenants have not established that they had a right to withhold rent from the Landlord in this situation, pursuant to section 33 of the *Act*.

There is no evidence before me that the Tenants tried to communicate with the new Landlord or Agent to advise them of the problem in the rental unit. The Tenants testified that they withheld rent because they were unfamiliar with the new Landlord and his Agent(s). The Tenants did not indicate that they made any attempt to ascertain who their new Landlord was, if they were suspicious of the Agents who attended the rental unit and asked for rent payments; however, as noted above, the Tenants were confident

enough in the identify of their new Landlord to serve him with a notice of hearing in this matter.

Section 26 of the Act states the following:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenants are unsuccessful in their Application to cancel the 10 Day Notice, because they repeatedly did not pay the rent when it was due, and they have not established that they had a right under the Act to deduct all or a portion of the rent, due to the condition of their rental unit.

Based on the above, I must turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act*. Section 52 states:

Form and content of notice to end tenancy

- 52** 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,
 - ...
 - (e) when given by a landlord, be in the approved form.

The 10 Day Notice in the documentary evidence before me is signed by the Landlord, gives the address of the rental unit, is dated, and contains an effective vacancy date; further, it is on a Residential Tenancy Branch form. I find the 10 Day Notice served by the Landlord complies with section 52 of the *Act*, and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the Act.

As the Tenants' Application was unsuccessful, I do not grant them recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Tenants' Application to cancel the 10 Day Notice is dismissed without leave to reapply, and reimbursement of the filing fee is not granted to them. Pursuant to section 55 of the *Act*, I grant the Landlord an Order of Possession effective two days after service of this Order on the Tenants. This Order must be served on the Tenants.

Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision will be emailed to both Parties, as indicated above.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: February 4, 2019

Residential Tenancy Branch