



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46(4) of the Act, and an order for compensation for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened at 11:00 A.M. on Thursday, February 7, 2019, and the landlord and her legal counsel attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend or call into the hearing, which ended at 11:11 A.M.

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.

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 compensation for the filing fee?

Background and Evidence

The landlord testified and confirmed that the tenancy commenced on December 15, 2015. Monthly rent was \$2,100.00, due on the first of the month. The rent has since increased, and that the increase is another issue not dealt with in this application. The tenants paid a security deposit of \$1,050.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that the Notice was issued on December 20, 2018 and was served by registered mail on the tenants. The Notice indicated that rent in the amount of \$2,100.00 was due on December 1, 2018. A copy of the Notice was submitted into evidence.

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 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. In this case, the landlord issued the Notice for the tenants' failure to pay rent when it was due.

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 testified and provided documentary evidence by way of the tenancy agreement and the Notice to support their submission, that the tenants did not pay rent when it was due. There is no 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

such, I dismiss the tenants' application for an order cancelling the Notice without leave to reapply. The Notice, dated December 20, 2018, is upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. Having reviewed the Notice, I find that the Notice complies with the requirements set out in section 52 of the Act.

Finally, 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. Accordingly, I grant an order of possession to the landlord.

Conclusion

I hereby dismiss the tenants' application in its entirety, 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 7, 2019

Residential Tenancy Branch