



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenants received the landlord's hearing documents and evidence. I also confirmed that the tenants had not made any written submissions to the Residential Tenancy Branch prior to this proceeding and intended to provide me with their position orally.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The co-tenancy agreement started on October 1, 2015 and the tenants paid a security deposit of \$275.00. The rent was originally set at \$550.00 per month, payable on the first day of every month. The rent has increased since the tenancy started the monthly rent has been \$570.00 since May 2018.

The tenants failed to pay rent that was due on January 1, 2019. On January 2, 2019 the landlord personally served co-tenant VH with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The 10 Day Notice indicates rent of \$570.00 was outstanding as of January 1, 2019 and has a stated effective date of January 12, 2019. The tenants did not pay the outstanding rent for January 2019 and have not paid any rent for the subsequent months and the tenants continue to occupy the rental unit.

The tenants completed the document entitled Tenant's Application for Dispute Resolution indicating they were disputing the 10 Day Notice and gave it to the owner of the property but the tenants did not file their Application for Dispute Resolution with the Residential Tenancy Branch.

VH testified that when he received the 10 Day Notice he told the landlord that they would have the rent the following day, on January 3, 2019. VH testified that the landlord told him not to pay the rent since she would not accept it and that she would not accept any rent for subsequent months since the owner wanted the tenancy to end. Based on these statements the tenants decided not to present the landlord with any payments.

The tenants testified that they wish for their tenancy to continue and acknowledge owing three months' worth of rent at this point but they also acknowledged that they do not currently have three months' worth of rent available to them. The tenants testified that KP had been unemployed and they were using VH's income assistance cheque to pay for food and other bills.

The landlord acknowledged a conversation was had on January 2, 2019 but had a different recollection of it. The landlord denied telling the tenant not to pay the outstanding rent. The landlord acknowledged that she told the tenant that the owner wanted the tenants to move out due to their repeated late payment of rent and implied that the landlord would be evicting the tenants in any event. Included in the landlord's evidence were copies of rent receipts in an effort to demonstrate the tenants were often late in paying the full amount of rent.

The landlord requested an Order of Possession effective as soon as possible considering the landlord has already lost three months of rent. The tenants requested they be permitted occupancy until March 20, 2019 if an Order of Possession were granted.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any information to suggest the tenants had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

It was undisputed that the tenants were required to pay rent of \$570.00 on the first day of every month and the tenants failed to do so for the month of January 2019. It was also undisputed that the landlord personally served a 10 Day Notice on January 2, 2019.

As to the tenants' argument they intended to pay the outstanding rent within five days of receiving the 10 Day Notice but the landlord precluded them from doing so, I find the disputed oral testimony to be insufficiently persuasive. Even if the tenant made the statement to the landlord that he intended to pay the rent on January 3, 2019, the tenants did not present any evidence to demonstrate the funds were available to them. Nor, did the tenants make an effort to go to the landlord and present payment on January 3, 2019 or any other date. Having heard the one co-tenant was unemployed and the other co-tenant was using his income assistance money to pay for their food and other bills, I find it more likely than not that the tenants did not have the funds to pay the rent. Nevertheless, in a circumstance where a tenant does attempt to pay the outstanding rent and nullify the 10 Day Notice and the landlord precludes the tenant from making the payment, I find it reasonable to expect the tenant would file to dispute the 10 Day Notice so that matter may be heard.

Although the tenants gave the owner of the property a Tenant's Application for Dispute Resolution indicating they were disputing the 10 Day Notice, the tenants did not file the Application with the Residential Tenancy Branch as they are required to do under section 46(4) to dispute a 10 Day Notice. An Application for Dispute Resolution must be filed with the Residential Tenancy Branch by doing so online or in person at a Service BC Office, along with the filing fee or documents to support a fee waiver. The Residential Tenancy Branch then prepares a hearing package for the applicant to serve upon the respondent. Upon a search of the Residential Tenancy Branch records I noted that there was no Application for Dispute Resolution processed for the tenants in this case. The tenants acknowledged that they did not file the paperwork with the Residential Tenancy Branch and only served their Application for Dispute Resolution to

the owner of the property. Accordingly, I find the tenants did not file to dispute the 10 Day Notice and I consider the 10 Day Notice to be undisputed.

In light of the above, I find the tenants are conclusively presumed to have accepted that this tenancy would end on January 12, 2019 and I find the landlord entitled to an Order of Possession pursuant to section 55(2) of the Act.

Considering the landlord has already suffered loss of rent for three months, I grant the landlord's request for an Order of Possession effective as soon as possible. I provide the landlord with an Order of Possession that is effective two (2) days after service upon the tenants.

I award the landlord recovery of the filing fee paid for this Application. The landlord is authorized to deduct \$100.00 from the tenants' security deposit in satisfaction of this award.

Conclusion

The landlord is provided an Order of Possession for unpaid rent effective two (2) days after service upon the tenants.

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: March 07, 2019

Residential Tenancy Branch