



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **AAT CNR LAT MNRT OLC FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to allow access for the tenant or their guests pursuant to section 30;
- An order to cancel a 10 Day Notice for unpaid rent or utilities pursuant to section 46;
- Authorization for the tenants to change the locks to the rental unit pursuant to section 31;
- A monetary order for costs of emergency repairs pursuant to section 33;
- An order that the landlord comply with the Act, Legislation or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for the application from the landlord pursuant to section 72.

None of the tenants attended the hearing although I left the teleconference connection open throughout the hearing that started at 9:30 a.m. and concluded at 10:10 a.m.

The landlord was represented by her agent, TP (landlord) who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenants.

Preliminary Matter – evidence

The tenants did not file a copy of the Notice to End Tenancy, in contravention of Rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 requires the applicant submit a copy of the Notice to End Tenancy if they seek an order to cancel it.

The landlord testified he was not served with a Notice of Dispute Resolution Proceeding or the tenants' evidence thus was unaware the tenants had not filed a copy of the Notice to End Tenancy. He became aware of this hearing on February 27, 2019 when he contacted the Residential Tenancy Branch to inquire about the status of a Direct Request he filed on February 20, 2019 related to this tenancy. The file number of the Direct Request Proceeding is noted on the cover page of this decision.

As the landlord was not served with Notice of Dispute Resolution Proceeding he was not able to upload evidence.

In a dispute involving the end of a tenancy, I find the tenants' position would not be prejudiced, and the principles of natural justice would not be breached if I were to allow the landlord to provide me with the 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") and the tenancy agreement. In accordance with Rule 3.19, I requested and accepted these pieces of evidence from the landlord.

Preliminary Issue – Parties named on Tenancy Agreement

The tenancy agreement provided by the landlord shows it was signed by the two tenants shown on the cover page of this decision and no others. Although the application was filed by multiple tenants, only the tenants named on the cover page of this decision were party to the tenancy agreement and are liable for losses or capable of receiving compensation from the landlord. In accordance with Rule 6.2 I determine the other applicants have no standing to commence an application and I dismiss their participation as applicants in this proceeding.

Issue(s) to be Decided

Are the tenants entitled to:

- An order to allow access to the rental unit for the tenant or their guests;
- An order to cancel a 10 Day Notice for unpaid rent or utilities;
- Authorization for the tenants to change the locks to the rental unit;
- A monetary order for costs of emergency repairs;
- An order that the landlord comply with the Act, Legislation or tenancy agreement; and
- An order to recover the filing fee for the application from the landlord?

Background and Evidence

No evidence was provided by the tenants and the tenants did not attend the hearing to provide testimony.

The landlord provided the tenancy agreement signed by the tenants and the landlord on June 30, 2018. The one year fixed term tenancy began on July 1, 2018 with rent of \$3,500.00 due on the first of the month.

The landlord provided a copy of the Notice dated January 12, 2019 which states the tenants failed to pay \$3,000.00 of the monthly rent due on January 1, 2019. The effective (move-out) date on the Notice is January 21, 2019. A signed, witnessed proof of service document was filed indicating the landlord personally served the tenant, MD on January 12, 2019.

The tenants filed for dispute resolution seeking to cancel the Notice on January 24, 2019, twelve (12) days after receiving the Notice.

The landlord testified that as of January 12, 2019, the tenants were in arrears of rent by \$3,000.00.

Analysis – Tenants' application

The tenants did not attend the hearing which was scheduled for 9:30am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

Consequently, I dismiss all parts of the tenants' application without leave to reapply.

Analysis

I find that the tenants were duly served with the Notice on January 12, 2019 in accordance with section 88 of the Act.

Sections 46(4) and (5) of the Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, pursuant to section 46(5)(a) the tenants are conclusively presumed to have accepted the tenancy ended on January 21, 2019, the effective date of the Notice, and must move out of the unit.

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 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 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.

Conclusion

I find the landlord is entitled to an Order of Possession, effective **two days after service on the tenants**. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 14, 2019

Residential Tenancy Branch