



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 46 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The following are agreed facts: the tenancy, under written agreement, started on December 1, 2017. The tenancy agreement provides that rent of \$1,900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The Tenants did not pay rent on March 1, 2019. On March 6, 2019 the Tenants paid \$1,000.00 towards March 2019 rent. On March 8, 2019 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Notice sets out unpaid rent of \$1,050.00 however the Parties are aware that only \$900.00 was outstanding in rent for March 2019. The Tenants have not paid the outstanding rent for March 2019 and have not paid the rent for April 2019. The Tenants have not moved out of the unit.

The Tenant states that prior to signing the tenancy agreement the Landlord orally agreed that the Tenants would pay rent on the 5th day of each month. The Tenant states that despite this oral agreement the tenancy agreement stated that rent would be paid on the first day of each month. The Tenant states that they were aware of this difference and proceeded to sign the tenancy agreement with rent payable on the first day of each month despite the difference. The Tenant confirms that when signing the tenancy agreement they understood that rent was payable on the first day of each month. The Tenant states that they had the extra rent available to be paid when they received the Notice but did not do so. The Tenant confirms that the Landlord did not agree to any extra time to pay the rent after receipt of the Notice. The Tenant states that they were unable to pay the rent as it did not coincide with the days they received their income. The Tenant states that the extra amount on the Notice is for the payment of rent for a separate space or garage. The Tenant states that they orally agreed with the Landlord to rent the garage in February 2018. The Tenant states that they have been paying a total of \$2,100.00 monthly. The Tenant also states that they have only been paying \$1,900.00 and have never paid for the use of the garage.

The Landlord states that the Tenants have been repeatedly late paying rent, often not paying rent until the end of the month. The Landlord seeks an immediate order of possession should the Notice be found valid.

Analysis

Section 26(1) of the Act provides that 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. Based on the undisputed evidence that the tenancy agreement requires rent of \$1,900.00 to be paid on the first day of each month and on the Tenant's evidence that they understood at the time of signing the tenancy agreement that rent was payable on the first day of each month I find that the rent was due and payable on the first day of each month.

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the undisputed evidence that the Tenants did not pay the full rent as required under the tenancy agreement, the undisputed evidence of the Tenant having received the Notice, the undisputed evidence that upon receiving the Notice the Tenants were aware that there was outstanding rent of \$900.00, and as there is no evidence of anything that would relieve the Tenants of their obligation to pay the full rent on March 1, 2019 I find that the Notice is valid. I therefore dismiss the Tenants' claim to cancel the Notice and in effect the application is dismissed.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that 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, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given that the Notice has been upheld as valid I find that the Landlord is entitled to an order of possession.

Conclusion

The Notice is valid and the Tenants' application is dismissed.

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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 Act.

Dated: April 18, 2019

Residential Tenancy Branch