



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNR, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause dated February 15, 2019 ("1 Month Notice"), a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 26, 2019, and to recover the cost of the filing fee.

The tenants, the landlord and an agent for the landlord ("agent") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent confirmed that they were served with the tenants' application and their documentary evidence and had the opportunity to review that evidence prior to the hearing. The agent also confirmed that the landlord did not submit any documentary evidence in response to the tenants' application. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to the parties. In addition, any order(s) will be emailed to the appropriate party.

During the hearing, the rental unit address was corrected to include “Lower Level” to be consistent with the tenancy agreement submitted in evidence. This amendment was made by consent of the parties.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Should the 10 Day Notice be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2018 and is scheduled to revert to a month to month tenancy after April 30, 2019. The monthly rent is \$1,200.00 per month and is due on the first day of each month. The tenants confirmed that they received the 1 Month Notice dated February 15, 2019 on February 22, 2019. The tenants disputed the 1 Month Notice on March 6, 2019. The landlord signed, dated and wrote the details of the causes listed on the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice is March 31, 2019.

The tenants testified that they have not paid any money for use and occupancy for April 2019 as they were advised not to do so. The landlords confirmed that no money has been paid by the tenants for April 2019 use and occupancy.

Analysis

Based on the documentary evidence, testimony and on the balance of probabilities, I find the following.

I have reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*. I also find that as the tenants confirmed that they received the 1 Month Notice on February 22, 2019. The tenants eventually applied to dispute the 1 Month Notice on Wednesday March 6, 2019, which I find is beyond the 10 day timeline provided for under the *Act*. Section 47(4) and 47(5) of the *Act* states the following:

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days after the date the tenant receives the notice.**

(5) **If a tenant who has received a notice under this section does not 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 by that date.

[Emphasis added]

Based on the above, I find that the tenants failed to dispute the 1 Month Notice by Monday, March 4, 2019, which was the deadline for disputing the 1 Month Notice. Therefore, pursuant to section 47(5) of the *Act* I find the tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date which is listed as March 31, 2019. Therefore, I find the tenancy ended on March 31, 2019 and I dismiss the tenants' application as a result, without leave to reapply. I do not find it necessary to consider the 1 Month Notice further, or the 10 Day Notice as a result. I note that the tenants did not apply for more time to make an application to dispute a Notice to End Tenancy under the *Act*. Pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** from service on the tenants.

I do not grant the filing fee as the tenants' application was dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply. The tenancy ended on March 31, 2019.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to both parties as indicated above. The order of possession will only be emailed to the landlord for service on the tenants.

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: April 23, 2019

Residential Tenancy Branch