



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, (the “Notice”) issued on March 25, 2019, for an order for the Landlord to comply with the *Act*, and for a monetary order for compensation. The matter was set for a conference call.

One of the Landlords and both of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were each provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

Preliminary Matters- Related Issues

I have reviewed the Tenants’ application, and I note that they have applied to cancel a 10-Day Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenants’ request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenants' claims for a monetary order for compensation, and for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenants' claim to cancel the 10-Day Notice.

Issues to be Decided

- Should the Notice issued on March 25, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties to this dispute did not agree to the date that the tenancy began; the Tenants testified that the tenancy began on January 1, 2017, and the Landlord testified that the tenancy began on December 16, 2016. The Parties agreed that rent in the amount of \$1,480.00 is to be paid by the first day of each month, and the Landlord is holding a \$740.000 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that he served the 10-Day Notice to the Tenants on March 25, 2019, by leaving in the mail box for the rental unit. The 10-Day Notice has an effective date of April 8, 2019, and an outstanding utilities amount of \$157.00. The Tenants submitted a copy of the Notice into documentary evidence.

The Landlord testified the Tenants has not paid the hydro bill for the period of March 17, 2018 to May 16, 2018, in the amount of \$157.00. The Landlord testified that he had send the written request for payment of the hydro bill to the Tenant on June 1, 2018, but that as of the date of this hearing the Tenants had not paid the outstanding utilities. The Landlord submitted a copy of the hydro bill and a spreadsheet detailing the hydro bills and payment history of this tenancy into documentary evidence.

The Tenants testified that he had paid all the utilities due for this tenancy, noting that the hydro bill submitted into evidence by the Landlord showed a credit on the account.

The Landlord testified that yes there had been a credit on the hydro account during the May 2018 billing, but that was due to the Tenants paying the previous hydro bill late and the hydro company automatically taking the late payment from the Landlords account.

The Landlord explained that there are two rental units on the property, so he maintains the utility bills in his name and changes each tenant a percentage of the bill each billing period. The

Landlord testified that he has set up all of the utility accounts to automatically take the payments from his bank account if they are not paid, by the Tenants, by the due date.

The Landlord testified that the previous hydro bill for March 2018, that was due on April 10, 2018, had been paid by the Tenants on April 12, 2018, two days late. The Landlord testified that the hydro company had automatically taken the payment due for March 2018, from his bank account on April 10, 2018; so, when the Tenants made their payment on April 12, 2018, the Tenants payment created a credit on the hydro account that was documented on the next hydro bill for May 2018.

The Landlord testified that the credit on the hydro account for the rental unit, is only there due to a payment made by the Landlord and that the Tenant still owes the \$157.00 for the May 2018 hydro bill, to the Landlord.

The Tenants testified that they had not received a request for payment of the \$157.00 for the May 2018 hydro bill from the Landlord.

The Landlord testified that he had sent a written request for payment to the Tenants but that they had refused to pay it, telling the Landlord that he owed them compensation, so they would not be paying the utility bill.

The Landlord is requesting that the Notice be enforced and that an order of possession be issued, as the Tenant did not pay the outstanding utilities within five days of receiving the 10-Day Notice as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent or Utilities a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

I find that the Tenants received the 10-Day notice on March 25, 2019, and that they did apply to dispute the Notice within the legislated timeline.

Accept the testimony and documentary evidence submitted by the Landlord, and I find that there is an outstanding hydro bill of \$157.00 due for this tenancy and that the Landlord had made a written demand to the Tenants for the payment of this hydro bill, on June 1, 2018.

I accept the agreed upon testimony of both parties that the Tenants had not paid the outstanding utilities as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenants are in breach of section 26 of the Act by not paying the in accordance with the tenancy agreement and I dismiss the Tenants' application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has in their application to dispute the notice.

Order of possession for the landlord

55 (1) 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 have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenants' application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court

and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

I dismiss the Tenant application to cancel the Notice, issued March 25, 2019.

I grant an **Order of Possession** to the Landlords effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: April 25, 2019

Residential Tenancy Branch