



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ERP, RP, PSF, MNSD

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 2, 2019 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to complete emergency and regular repairs in the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to obtain a return of the tenants' security and pet damage deposits, pursuant to section 38.

The two tenants did not attend this hearing, which lasted approximately 17 minutes. The landlord and his wife attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's wife did not testify at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord stated that he served the tenants with his written evidence package on May 16, 2019, by way of leaving a copy in their mailbox. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's evidence package on May 19, 2019, three days after it was left in the mailbox.

The landlord testified that the tenants were served with the landlord's 10 Day Notice on May 2, 2019, by way of posting to their rental unit door. The notice indicates an effective move-out date of May 12, 2019. A copy of the notice was provided for this hearing. The landlord provided a signed, witnessed proof of service that indicates that he posted the notice and his wife witnessed it. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on May 5, 2019, three days after its posting. The tenants indicated that they received it when they filed this application to cancel the notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the landlord's surname. The landlord consented to this amendment during the hearing. I find no prejudice to the tenants in making this amendment.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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.

In the absence of any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply, with the exception of the application for the return of the tenants' security and pet damage deposits. The tenants' deposits are to be dealt with at the end of the tenancy in accordance with section 38 of the *Act*.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the landlord's testimony, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2018. Monthly rent in the amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$600.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,400.00 due on May 1, 2019. The landlord said that the tenants failed to pay rent of \$1,400.00 for May 2019 and this amount is still unpaid. The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, tenants may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenants are deemed to have received the notice. The tenants were deemed to have received the 10 Day Notice on May 5, 2019, and filed an amendment to their application to dispute it on May 9, 2019. Therefore, they were within the five day time limit to dispute the notice. However, the tenants did not appear at this hearing in order to provide their submissions.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case required the tenants to pay by the first day of each month. On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenants did not attend.

The tenants failed to pay the full rent due of \$1,400.00 due on May 1, 2019, within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on May

15, 2019, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by May 15, 2019.

Section 55(1) of the *Act* reads as follows:

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.

As noted above, I dismissed the tenants' application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application to obtain a return of the security and pet damage deposits is dismissed with leave to reapply.

The remainder of the tenants' application is dismissed without leave to reapply.

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: May 31, 2019

Residential Tenancy Branch