



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1079166 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On April 8, 2019, the Landlords applied for an order of possession for the rental unit; a monetary order for unpaid rent ; to keep the security deposit; and to recover the cost of the filing fee.

On March 19, 2019, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the cost of the filing fee.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

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 Tenant testified that she never received a Notice of Dispute Resolution Proceeding from the Landlord. She testified that Canada Post is currently not delivering mail to the dispute address. She testified that she never received a notification card. The Tenant provided a copy of a mail delivery problem report from Canada Post that indicates the

mailbox is too far from the road. The report indicates that mail delivery will resume after repairs are met.

The Landlord confirmed that he was aware that Canada Post was not delivering mail to the rental address, so he recently installed a mailbox on the property. The Landlord testified that he was unaware that the mail was still not being delivered.

The Landlord testified that he served his Notice of Dispute Resolution Proceeding to the Tenants using registered mail sent on April 11, 2019. The Landlord provided a copy of the registered mail receipt as proof of service.

Section 89 and 90 of the Act provide that a Notice of Notice of Dispute Resolution Proceeding may be served using registered mail and is deemed to be received on the fifth day after it is mailed.

In the circumstances, I find that it is not reasonable to conclude that the Tenant can be deemed to have received the Landlord's Notice of Dispute Resolution Proceeding documents. I find that the Tenant has not been properly served with the Landlords application and claim. The Landlords application is dismissed with leave to reapply.

The hearing proceeded on the Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2019, ('the 10 Day Notice')

Section 55 (1) of the Act requires that I must grant the Landlord an order of possession of the rental unit if I dismiss the Tenants application to cancel the notice to end tenancy.

Issue to be Decided

- Did the Tenants fail to pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice?

Background and Evidence

The parties testified that the tenancy began on February 1, 2019, as a one year fixed term tenancy that can continue thereafter on a month to month basis. Rent in the amount of \$4,800.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$2,400.00 and a pet damage deposit of \$2,400.00. The Landlord provided a copy of the tenancy agreement.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2019, ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay \$4,800.00 that was due on March 1, 2019. The Landlord and Tenants both provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenants received the 10 Day Notice on March 16, 2019 and disputed the 10 Day Notice on March 19, 2019, within the required timeframe.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement within five days of receiving of the 10 Day Notice. The Landlord testified that the Tenant provided payment of the deposits and the first month's rent and provided post-dated cheques to him at the start of the tenancy. The Landlord testified that the cheque for March 2019, rent bounced.

The Landlord testified that he has not received any rent payments from the Tenants since the March rent cheque bounced, and since the 10 Day Notice was served on March 16, 2019. The Landlord testified that the Tenants did not have the funds to pay the rent and have refused to pay any rent until the matter is heard by the Residential Tenancy Branch.

The Landlord testified that prior to the issuance of the 10 Day Notice, the Tenant made an offer to pay a portion of the rent owing for March 2019, and asked to be permitted to catch up on paying the remainder. The Landlord did not accept the Tenants proposal.

The Landlord testified that the Tenant now owes rent in the amount of \$14,400.00 for the past three months of unpaid rent.

The Landlord is requesting an order of possession for the rental unit.

In reply, the Tenant testified that the March rent has not been paid. The Tenant testified that she attempted to pay part of the rent on March 19, 2019, but she does not know who to pay the rent too. She testified that she also offered to pay \$4,800.00 on March 19, 2019.

The Tenant provided a number of documents including a document dated March 28, 2019, which provides that on March 19, 2019 she was told by Landlord Mr. K.S. to deal with the Landlord Mr. P.A.. The letter indicates that on March 28, 2019, Mr. P.A. refused to do vital repairs on the home. The letter indicates that \$2,000.00 cash was also offered as a partial payment for April rent but the Landlord refused. Letter indicates that the Landlord agreed to let the Tenants pay March rent in increments.

The Tenant testified that the March 2019, rent cheque did not bounce. She testified that she put the payments on hold because she wants the Landlord to repair some items at the rental unit. The Tenant testified that she planned to start making rent payments once the Landlord started making repairs. The Tenant testified that she did not spend any of her own money on making repairs.

The Landlord testified that the Tenant did not offer to pay the full amount owing for March 2019 rent.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I do not accept the Tenant's submission that she did not know who to approach for tenancy matters and paying the rent. The tenancy agreement provides the name of Mr. P.A. as the Landlord. I find that the Tenants had dealt with Mr. P.A. and had entered into the agreement with Mr. P.A. and paid him the first month's rent and deposits and provided him with post-dated cheques. The 10 Day Notice was issued by Mr. P.A. The Tenants' own evidence includes that on March 19, 2019 the Tenants were informed by another Landlord to deal with Mr. P.A.

There is insufficient evidence from the Tenants that they attempted to pay the full amount of rent owing for March 2019 rent on March 19, 2019. The Tenant's letter indicates that she handed papers to the Landlord Mr. K.S. The Tenants letter makes no mention that the full amount of March rent was offered. The letter indicates that the Tenants asked to pay March 2019 rent in increments. I find that the Tenants made an

offer to make a partial payment of March rent and asked to be permitted time to make full payment.

I accept the Tenants testimony that they put a hold on the payment of rent because they were not happy with the Landlords response to making repairs. The Tenant testified that she planned to start making the rent payments once the Landlord started making repairs.

I find that pursuant to section 26 of the Act, the Tenants did not have a legal right to withhold payment of the rent due under the tenancy agreement. If the Tenants wanted to pursue repairs of the rental unit, the Tenants are required to continue paying the rent and they could have applied for dispute resolution requesting a repair order.

I find that the rent owing for March 2019 was not paid to the Landlord within 5 days of March 16, 2019 the day the Tenants received the 10 Day Notice. I find that the Tenants did not have a legal right to withhold payment of March 2019, rent.

I dismiss the Tenant's application to cancel the 10 Day Notice dated March 16, 2019.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective two (2) 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.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their application, I decline to award the Tenants the cost of the filing fee.

Conclusion

The Tenants failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and they did not have a legal right to withhold payment of the rent.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2019, is dismissed.

The Landlords are granted an order of possession effective two (2) days after service on the Tenants.

Since the Landlord's application was dismissed due to service issues, the Landlord has leave to reapply for a monetary order for unpaid rent and to keep the security deposit.

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 09, 2019

Residential Tenancy Branch