



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 6, 2019 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46.

The two tenants did not attend this hearing, which lasted approximately 18 minutes. The landlord and her agent 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 confirmed that her husband, who was her agent, had permission to speak on her behalf 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 testified that the tenants were served with the landlord's 10 Day Notice on March 6, 2019, by way of posting to their rental unit door. The notice indicates an effective move-out date of March 16, 2019. 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 March 9, 2019, three days after its posting. The tenants indicated that they received it on March 7, 2019, when they filed this application to cancel the notice.

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.

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 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 March 1, 2017. Monthly rent in the current amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$950.00 due on March 1, 2019. The landlord said that the tenants failed to pay rent of \$950.00 for March 2019 and this amount is still unpaid.

The landlord claimed that she sent two letters, dated March 6 and March 8, which the tenants provided with this application. The letters state that since one of the two tenants paid their share of rent, they could move out on March 31, 2019, and if they pay the full rent for April 2019 they can move out on April 30, 2019. The landlord claimed that April 2019 rent of \$1,800.00 was paid on April 1, 2019 and that May 2019 partial rent of \$1,100.00 was paid on May 1, 2019. She said that rent of \$700.00 was still outstanding for May 2019.

The landlord claimed that she sent a text message to the tenants on April 15, 2019, indicating that if they paid the full March and May 2019 rent they could move out by May 31, 2019 and

cancel this hearing. She said that the tenants responded to her text message on April 18, 2019, claiming that they were moving on June 1, 2019, and that the landlord could keep their security deposit and tax return towards the outstanding rent, and they would pay the May 2019 rent on May 1 and 3, 2019. 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 March 9, 2019, and filed their application to dispute it on March 19, 2019. Therefore, they were not within the five day time limit to dispute the notice. The tenants applied for more time to dispute the notice, but did not appear at this hearing in order to provide their submissions as to what exceptional circumstances arose, requiring them to apply for more time.

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 \$950.00 due on March 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 March 19, 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 March 19, 2019.

I find that the landlord did not waive her right to enforce the 10 Day Notice. Despite the letters and the text message that the landlord sent to the tenants about moving out at later dates, she still stated that the tenants had to move out and pay the outstanding rent in those letters and message. The tenants responded by stating that they wanted to pay the outstanding rent and move out by June 1, 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 at 1:00 p.m. on May 31, 2019. The landlord specifically asked for this order of possession date during the hearing, despite the fact that rent is still outstanding for this tenancy.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on May 31, 2019. 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' entire 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 06, 2019

Residential Tenancy Branch