



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member. The co-tenant RL (the "tenant") primarily spoke for both named tenants.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the materials. Based on the evidence I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

While the landlord made reference to a separate application they have filed with the Branch, they indicated that the application has not yet been served on the tenants. Accordingly, I decline to combine the applications to be heard together at this time.

Issue(s) to be Decided

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

Background and Evidence

The monthly rent for this periodic tenancy is \$950.00 payable by the 1st of each month. The landlord gave evidence that the tenant failed to pay rent in full for October and November, 2018 and April and May, 2019. The landlord issued several 10 Day Notices for each of the months rent was unpaid. All of the 10 Day Notices were posted on the rental unit door by the landlord on May 13, 2019.

The tenant disputes that any amount of arrears is owed for this tenancy and testified that they have made full payment of rent. The tenant added that they have entered into an agreement with the landlord that no rent is due and owing for July, 2019 provided they vacate the rental unit. The tenant said they are in the process of vacating. The tenant also made reference in their written submissions to the presence of mold in the rental suite.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, I find that the deemed date of service of the 10 Day Notices is May 16, 2019, three days after posting, in accordance with section 90 of the *Act*. The tenants filed their notice of dispute application on May 20, 2019 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

Pursuant to 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement.

The tenant submits that they have paid rent in full for the months the landlord has issued the 10 Day Notices. The landlord disputes that full payment has been made and provided into documentary evidence their records and calculations. I find the landlord's evidence to be believable, convincing and reasonable under the circumstances. I do not find the tenant's submissions or testimony to be supported by any documentary evidence or to have the air of reality.

I further find that the tenant's submissions regarding mold in the rental unit or subsequent agreements with the landlord to be irrelevant to the issue at hand and unsupported in any materials.

I accept the evidence of the landlord that the rental arrear has not been paid within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application.

Section 55 of the *Act* provides that:

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 dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. While the landlord issued a separate 10 Day Notice for each of the months that the tenants failed to pay rent in full, I find that the intention and amount owing is clear. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant). 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: July 5, 2019

Residential Tenancy Branch