



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, for an order suspending or setting conditions on the landlord's right to enter the rental unit, and for recovery of the filing fee paid for this application.

The tenants and the landlord, attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter- I have determined, and the tenants were informed, that the portion of the tenants' application dealing with a request for an order suspending or setting conditions on the landlord's right to enter the rental unit is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and the hearing proceeded on the tenants'

request to cancel the Notice. A determination of the remaining portion of the tenants' application will be made at the conclusion of this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice?

Are the tenants entitled to recovery of their filing fee?

Background and Evidence

The tenants submitted a copy of a written tenancy agreement which shows this tenancy began on April 15, 2016, that monthly rent was \$3,500.00 and a security deposit of \$1,750.00 was by the tenants.

In response to my inquiry, the tenants submitted that the monthly rent has been reduced to \$3,200.00. The landlord did not confirm this assertion.

The landlord proceeded first in the hearing to explain and support his Notice.

The landlord submitted that the Notice, dated June 5, 2019, was served on the tenants on June 5, 2019, by attaching it to the tenants' door, listing unpaid rent of \$6,600.00 owed as May 1, 2019. The effective move-out date listed was June 18, 2019. The landlord submitted the Notice into evidence.

The landlord asserted that since the issuance of the Notice, he has not received rent from the tenants in any amount.

Tenants' response-

The tenants confirmed receiving the Notice on June 6, 2019.

The tenants confirmed not paying monthly rent and submitted that they had a written agreement with the landlord giving them "4 months rent at no cost rent" for their help in completing the sale of his home. The four months of free rent began on May 1 through August 1, 2019, according to the written agreement.

The tenants submitted a copy of the undated written agreement, which shows their signature and the landlord's signature.

The tenants further submitted that the Notice they received was not signed by the landlord.

It is noted that the tenants failed to submit a copy of the Notice.

Landlord's response to tenants' evidence -

The landlord denied signing an agreement, questioning why he would sign such an agreement, and said that his signature on the written agreement was a forgery. The landlord submitted that he has contacted the RCMP about the forgery and there is an ongoing case. The landlord submitted a copy of an RCMP card.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The Notice provided information to the tenants, which explained that the tenants had 5 days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") or Service BC in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 5 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

In this case, the tenants confirmed they received the Notice on June 6, 2019, and were required to file their application within 5 days, or June 11, 2019; instead, the tenants filed their application on June 12, 2019.

I find the tenants failed to support their assertion that the Notice they received was not signed by the landlord. The tenants did not submit their copy in support of their

application and the only copy of the Notice I had before me was the one submitted by the landlord, which shows he signed it.

Due to the above, I find the tenants failed to submit their application within 5 days and are conclusively presumed to have accepted the end of the tenancy.

I therefore dismiss the tenants' application seeking cancellation of the Notice.

As such, I find that the landlord is entitled to and I therefore grant him an order of possession of the rental unit effective 2 days after service upon the tenants, pursuant to section 55(1)(b) of the Act.

As I have dismissed the tenants' application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of the tenants' application for an order suspending or setting conditions on the landlord's right to enter the rental unit.

As I have dismissed the tenants' application, I dismiss their claim for recovery of their filing fee.

Conclusion

The tenants' application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenants.

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: August 2, 2019

Residential Tenancy Branch