



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 18, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 15, 2019 (the "10 Day Notice");

The hearing was scheduled for 11:00 A.M. on September 16, 2019 as a teleconference hearing. L.B. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that L.B. and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on September 16, 2019.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither of the Tenants nor a

representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*.

L.B. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

L.B. testified that the tenancy began on May 1, 2019. The Tenants are required to pay rent in the amount of \$2,400.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,150.00 which the Landlord continues to hold. L.B. stated that she is unsure if the Tenants continue to occupy the rental unit; therefore, the Landlord is seeking an order of possession.

L.B. testified the Tenants did not pay rent when due for June and July 2019. L.B. stated that she subsequently served the Tenants with a 10 Day Notice dated July 15, 2019 with an effective date of July 25, 2019, by registered mail on July 15, 2019. L.B. testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$4,500.00 to the Landlord which was due on June 1, 2019.

L.B. stated that the Tenants have not paid any amount of outstanding rent to the Landlord since receiving the 10 Day Notice, and have not paid rent for August and September 2019 as well.

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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

L.B. testified that she served the Tenants with a the 10 Day Notice dated July 15, 2019 with an effective vacancy date of July 25, 2019, by registered mail on July 15, 2019. After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on July 18, 2019. As no one attended the hearing for the Tenants, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenants have not paid the outstanding rent owed to the Landlord.

Under section 55 of the Act, when a Tenant's 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 Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served

onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants did not appear at the time of the hearing; therefore, their Application seeking the cancellation of the 10 Day Notice is dismissed without leave to reapply.

The Tenants have failed to pay rent and have breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in 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: September 16, 2019

Residential Tenancy Branch