



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46.

The **tenants** did not attend this hearing, although I left the teleconference hearing connection open until **11:10 am** in order to enable the **tenants** to call into this teleconference hearing scheduled for **11:00 am**. The landlord's property manager ("RO") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that RO and I were the only ones who had called into this teleconference.

RO testified that the tenants served him with a copy of the notice of dispute resolution proceeding form and supporting written statements. He testified that he served the tenants personally with copies of his documentary evidence on September 3, 2019.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) an order that repairs be made to the rental unit; and
- 2) the cancellation of the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting April 1, 2016. Monthly rent is \$1,200.00 due of the first of the month. The tenants paid the landlord a security deposit of \$600.00. The landlord retains this deposit.

RO testified that the tenants failed to pay monthly rent for July 2019. He testified that he called tenant DP on July 2, 2019, and tenant DP advised him it was a banking error that he would sort out by the end of the week.

RO testified he called tenant DP on July 8, 2019, and again the tenant told him it was a banking error and that he would sort it out. RO did not wait any longer and, on July 11, 2019, he issued the Notice by posting it on the door of the rental unit. The amount of rental arrears claimed was \$1,200.00 as of July 1, 2019. The effective date was July 21, 2019.

RO testified that the tenant has also failed to pay monthly rent for August and September 2019. However, the landlord has not made any application to recover any unpaid rent.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the tenants bear the onus of proving that repairs are necessary, and the landlord bears the onus of proving that the Notice was validly issued.

I find that the tenants have failed to discharge their onus to show that repairs are necessary. They did not attend the hearing and provided no evidence in support of their application for an order that repairs be done.

Accordingly, I dismiss this portion of their application, without leave to reapply.

I accept the landlord's uncontroverted evidence that the tenants failed to pay rent for July, August, or September 2019. I accept the landlord's evidence that monthly rent is \$1,200.00.

As such, I find that the tenant had an obligation to pay monthly rent to the landlord. Based on the testimony of the landlord, I find that the tenants are, to date, in arrears of \$3,600.00 (\$1,200.00 x 3).

Section 46(1) of the Act states:

Landlord's notice: non-payment of rent

46(1) 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.

I find that \$1,200.00 in rental arrears was due to the landlord on the date he issued the Notice. I find that the tenants have not paid this amount.

Accordingly, I find that the Notice was validly issued. I therefore dismiss the tenants' application to cancel the Notice.

Section 55 of the Act states:

Order of possession for the landlord

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.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenants.

As the landlord has not applied for a monetary order regarding the rental arrears, I decline to make one.

Conclusion

I dismiss the tenants' application to cancel the Notice without leave to reapply.

I dismiss the tenants' application for repairs without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order and this decision on the tenant. Should the tenant fail to comply with this order, 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 17, 2019

Residential Tenancy Branch