



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46.

Both of the tenants attended. The landlord attended, represented by Property Manager, ES ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by the landlord. The tenancy began on July 1, 2012, originally as a fixed term becoming month to month after 5 months. Rent was set at \$1,300.00 per month payable on the first day of each month. Attached to the tenancy agreement is an addendum for units where the rent is related to the tenant's income. In this addendum, it is stated that the tenant's rent contribution is calculated according to rent scales provided in the operating agreements the landlord has signed with federal and provincial housing agencies.

On August 9th, the landlord sent a letter asking the tenants to provide additional information for the Annual Income Review. On September 3rd, the landlord advised that the tenant rent contribution was calculated to be \$1,613.00 per month. Letters were sent back and forth between the tenants and the landlord asking for adjustments and on

September 19th the tenants were advised that the tenant rent contribution would remain at \$1,613.00.

On October 2, 2019 the tenants paid \$660.00 of the \$1,613.00 rent together with a letter advising that they are struggling to pay bills and other home expenses based on their source of income. On October 2nd, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Notice”) by posting it to the door of the tenant’s rental unit. The tenant acknowledges receiving it on October 2nd. The landlord testified the tenants paid \$660.00 for rent for November and they provided the tenants with a receipt that indicates it is for ‘*use and occupancy only*’.

The tenants testified that they had been living in the unit for the last 9 years or more and always paid rent on time. The husband recently lost his job in August, leaving them financially unstable. They applied for Employment Insurance and were given 3 separate cheques over 3 months for hardship in the amount of \$1,261.00. The shelter portion of the cheques is \$660.00 and that is why they only were able to remit \$660.00 of the cheques to the landlord for each of the months of October and November. They are now in a position where they must repay the 3 payments of \$1,261.00 and are unable to do that and pay arrears in rent at the same time. They don’t have any money to pay either of the outstanding debts.

Analysis

The tenants testified they received the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 2, 2019 and applied to dispute it on October 4, 2019. This is within the 5 days after receiving the Notice as required by section 46 of the *Act*.

Although the tenants have provided evidence to show they are experiencing hardship and cannot pay the rent, section 26 of the *Act* is clear:

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, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find the tenants did not have a right to deduct any portion of their rent and that they failed to pay their full rent in the amount of \$1,613.00 by October 1, 2019, contrary to section 26. I uphold the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55 states:

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 examined the landlord's Notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the Notice, (b) give the address of the rental unit, (c) state the effective date of the Notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Conclusion

As the effective date stated on the Notice has passed, I issue an Order of Possession effective 2 days after service upon the tenants. 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.

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: November 07, 2019

Residential Tenancy Branch