



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, MT
For the landlords: OPR

Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (“Act”).

The tenant applied for an order cancelling the landlord’s One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for more time to file an application to dispute the Notice.

The landlords applied for an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued by the landlords to the tenant.

The landlords’ dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (“RTB”), dated October 9, 2109, which should be read in conjunction with this decision. The participatory hearing was scheduled for the same time and date as the tenant’s application.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

At the participatory hearing, the tenant, her support worker, and the landlords attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the other’s evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's One Month Notice?

Are the landlords entitled to an order of possession of the rental unit based upon their 10 Day Notice?

Background and Evidence

The evidence showed this tenancy began on February 1, 2017, for a monthly rent of \$1,100.00. The landlord submitted a copy of the written tenancy agreement.

The landlord said the tenant was issued a notice of rent increase, which was later amended, increasing the tenant's monthly rent to \$1,027.50. The landlords supplied a copy of the notice of rent increase and the amendment.

Landlords' evidence-

The landlord gave undisputed evidence that on September 5, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,127.50 as of September 1, 2019. The effective move-out date listed on the Notice was September 15, 2019. The landlord submitted a copy of the 10 Day Notice.

The landlord stated that the tenant ultimately paid the amount listed, in installments on September 13 and 14, 2019, but that the acceptance of the rent was on a "for use and occupancy" basis.

The landlord said the tenant failed to pay the monthly rent for October 2019.

Tenant's response-

The tenant said she vacated the rental unit, on November 1, 2019, and also responded that the landlord would not accept her monthly rent for October 2019.

Landlords' rebuttal-

The landlord denied that the tenant offered any monthly rent for October. Additionally, the landlord was not convinced the tenant had fully vacated the rental unit, as it appeared some of the tenant's belongings and garbage was still there. The landlord submitted that they have not received the tenant's notice to vacate, and still would like an order of possession of the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Landlord's application-

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

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I find the landlords submitted sufficient evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, September 15, 2019.

As a result, I find that the landlords are entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

I grant the landlords a final, legally binding order of possession of the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

Tenant's application-

As I have granted the landlords' application and granted them an order of possession for the rental unit based upon the 10 Day Notice and because the tenant has said she vacated the rental unit, I dismiss the tenant's application seeking cancellation of the 1 Month Notice, without leave to reapply.

Conclusion

The landlords have been granted an order of possession of the rental unit.

The tenant's application is dismissed.

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 4, 2019

Residential Tenancy Branch