



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RP, MNDCT, FF

Introduction

This hearing was convened as a result of the tenants' application and amended application for dispute resolution under the Residential Tenancy Act (Act). The tenants applied for an order cancelling a One Month Notice to End Tenancy for Cause (One Month) and recovery of the filing fee paid for the application. The tenants also filed an amended application for dispute resolution seeking cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), an order for repairs to the rental unit and for monetary compensation from the landlord for damage or loss.

The tenants, the landlord and the landlord's agent attended and the hearing process and procedure was explained prior to the start of the hearing.

At the outset of the hearing, the landlord agreed that he had provided no evidence and that he had received the tenants' evidence in advance of the hearing. Neither party raised any issues regarding service of the application or the evidence.

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

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch 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.

Preliminary matter-



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

I have determined that the portion of the tenants' application dealing with a request for repairs to the rental unit and for monetary compensation is unrelated to the primary issue of disputing or enforcing the two Notices issued by the landlord. 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 Notices. 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 Notices and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on September 15, 2017, for a monthly rent of \$2,100.00, due on the first day of the month.

The tenancy agreement also provides that the tenants will pay 75% of the Corix bill. The undisputed evidence is that the landlord agreed that the tenants' obligation to pay the Corix bill be subsequently reduced to 60% of the total, approximately in November 2017.

The tenants explained that they deducted 40% of the Corix bill from the monthly rent obligation and paid the landlord the balance each month.

Pursuant to the Rules, the landlord and agent proceeded first in the hearing to explain and support the Notices.

The One Month Notice was dated October 21, 2019, was served to the tenants by attaching the Notice to the tenants' door on that date, according to the landlord's agent, and listed an effective end of tenancy of December 1, 2019. The tenants submitted a copy of the Notice.



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

The tenants filed their application in dispute of the Notice on October 24, 2019, which I note was within the 10-day timeframe required by the Act.

The cause listed on the Notice alleged that the tenants or a person permitted on the property by the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant. In support of their Notice, the landlord was not able to say that the tenants have committed any illegal activities.

As to the landlord's 10 Day Notice, the landlord and agent submitted that the tenants were served with the Notice on November 10, 2019, by attaching the Notice to the tenants' door, listing an unpaid rent of \$2,100.00 owed as of November 1, 2019. The effective move-out date listed was November 24, 2019. The tenants submitted the Notice into evidence.

The landlord asserted that since the issuance of the Notice, he has not received rent from the tenants through the date of the hearing.

Tenants' response-

In response, the tenants confirmed that they have not paid rent due to their repair, financial, and other issues with this tenancy, as the landlord was not responsive to their requests for repairs and other concerns. These concerns included, among others, compensation for less parking, loss of the backyard, storage and repairs to the rental unit.

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 this Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Section 33 of the Act defines emergency repairs as:

- *major leaks in pipes or the roof,*



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

- *damaged or blocked water or sewer pipes or plumbing fixtures,*
- *the primary heating system,*
- *damaged or defective locks that give access to a rental unit,*
- *the electrical systems, or*
- *in prescribed circumstances, a rental unit or residential property*

Pursuant to section 46 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. In this case, the tenants disputed the Notice by filing their application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenants owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

I find that the issues raised by the tenants concerning compensation for less parking, loss of the backyard, storage and repairs are not emergency repairs.

I therefore find that the tenants did not establish that they had the legal right to withhold the rent owed.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenants' application seeking cancellation of the 10 Day Notice.

At the hearing, the landlord agreed that the tenancy could continue to December 31, 2019, and that we would agree to being granted an order of possession of the rental unit for that date.



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective at 1:00 p.m. on December 31, 2019. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are advised that costs of such enforcement such as bailiff fees are recoverable from the tenants.

I grant the portion of the tenants' application seeking cancellation of the One Month Notice, as I have found the landlord did not provide sufficient evidence to support the Notice.

As I have dismissed the tenants' application seeking cancellation of the 10 Day Notice and issued the landlord an order of possession, I dismiss the portion of the tenants' application for an order for repairs to the rental unit, without leave to reapply, as this relates to an ongoing tenancy.

I dismiss the portion of the tenants' application for monetary compensation from the landlord, with leave to reapply.

I also dismiss the tenants' request to recover the filing fee.

Conclusion

The tenants' application seeking cancellation of the 10 Day Notice is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession of the rental unit.

The landlord's One Month Notice is cancelled.

The portion of the tenants' application seeking an order for repairs to the rental unit is dismissed without leave to reapply, as the tenancy is ending.



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

The portion of the tenants' application seeking monetary compensation from the landlord is dismissed, with leave to reapply.

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: December 13, 2019.

Residential Tenancy Branch