



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH CARIBOO REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 5, 2019 ("10 Day Notice"), for a monetary claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for an Order for emergency repairs.

The Tenants, R.T. and K.K., and an agent for the Landlord, L.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness, A.L., for the Tenants was also present and was available to provide affirmed testimony, although the Tenants did not call on her during the hearing.

During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Prior to the Parties testifying in the hearing, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on their Application, the most urgent of which is the Application to set aside a 10 Day Notice. I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. Therefore, I advised that I would consider only the Tenants' Application to set aside the 10 Day Notice at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 15, 2019, with a monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$350.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenants with a 10 Day Notice by posting it on the rental unit door on November 5, 2019, for unpaid rent of \$350.00 that was due on November 1, 2019. The Parties agreed that the 10 Day Notice was signed and dated November 5, 2019, had the rental unit address, and had an effective vacancy date of November 15, 2019. However, this date is automatically corrected to November 18, 2019, by section 53 of the Act, because the 10 Day Notice was deemed served on the Tenants on the third day after it was posted on the door, pursuant to section 90 of the Act. Therefore, the effective vacancy date was on November 18, 2019, ten days after the 10 Day Notice was deemed served on the Tenants.

The Agent said the Tenants have not paid any rent since paying half a month's rent in November 2019. She said the Landlord has received no rent from the Tenants for December 2019 or January 2020. The Tenants acknowledged that they have not paid rent in full since October 2019. They said the Ministry of Social Development stopped paying their rent after the Tenants' received the 10 Day Notice and applied for dispute

resolution. The Tenants said the Ministry would not pay them any further rent until this matter was resolved.

The Landlord said that the Ministry paid the Tenants for the November rent in October 2019, not November, which was prior to the service of the 10 Day Notice. The Landlord said that she seeks an Order of Possession as soon as possible or the Tenants will fail to pay rent for February 2020, as well.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay 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.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find that the Tenants have not paid all the rent due to the Landlord. I also find that the 10 Day Notice is consistent with section 52, as to form and content. Therefore, I find that the 10 Day Notice is valid and should not be cancelled. Under section 26 of the Act, the Tenants could not withhold rent unless they had an Order from the Residential Tenancy Branch allowing them to do so, or, if the Tenants had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenants had no Order, nor did they have any evidence that they had paid for emergency repairs. This leads me to find that the Tenants had no authority under the Act to withhold rent from the Landlord. Therefore, I dismiss the Tenants’ Application. The Tenants’ claim for emergency repairs is dismissed without leave to reapply. The Tenants’ claim for monetary compensation is dismissed with leave to reapply.

The effective date of the 10 Day Notice was November 18, 2019, which has passed. Having found the Tenants failed to pay all rent when due, I find that pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession effective **two days after service**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenants are unsuccessful in their Application to cancel the 10 Day Notice. The Tenants acknowledged that they did not pay their full rent in November 2019, nor did they pay any rent since then, in conflict with section 26 of the Act.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 20, 2020

Residential Tenancy Branch