



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OLC RR

Introduction

This hearing was held as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2019 (10 Day Notice, for an directing the landlord to comply with the Act, regulation or tenancy agreement, and for a rent reduction in the amount of \$1,600.00.

An agent for the tenant CP (agent), the landlord, the spouse of the landlord DH (co-landlord) and an agent for the landlord (agent) attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and testimony provided.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on their application, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants'

request to set aside the 10 Day Notice at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply**.

In addition to the above, the agent CP requested an adjournment on behalf of the tenant, claiming that the tenant SS (tenant) was assaulted at 7:30 p.m. the night before the hearing outside of a restaurant and was currently in the Kelowna General Hospital. As a result, the undersigned called the Kelowna General Hospital and confirmed with the Admissions Clerk that tenant SS was not in the hospital as claimed by the tenant agent, CP. Tenant agent CP affirmed that the tenant was still at the hospital, which I advised was not supported by the Admissions Clerk. I also note that the Admissions Clerk tried a variety of similar names to confirm if there was a patient with a similar name admitted and was not successful. I find the Admissions Clerk to be credible and has no reason to provide incorrect information. The landlord opposed an adjournment as the landlord stated rent for December 2019 and January 2020 have not been paid.

In addition, both the co-landlord DH and landlord agent HC testified that the person claiming to be a tenant agent sounded the same as the tenant. The tenant agent was advised that the hearing would continue as I did not find the tenant agent to be credible as tenant SS was not admitted to Kelowna General Hospital as claimed, based on the testimony of the Admissions Clerk to the undersigned arbitrator.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2019. Monthly rent in the amount of \$1,600.00 is due on the first day of each month. A security deposit of \$800.00 was paid by the tenants at the start of the tenancy.

The landlord testified that the tenant was served on December 3, 2019 in person at the rental unit. The tenant disputed the 10 Day Notice on December 3, 2019. The effective vacancy date on the 10 Day Notice is listed as December 13, 2019. The landlord testified that the tenant has failed to pay rent for December 2019 and January 2020.

The landlord confirmed that the tenant continues to occupy the rental unit with their 18-year old son. The tenant agent had no evidence to present in terms of payments of rent for December 2019 or January 2020. The tenant agent did not dispute the landlord's testimony.

Analysis

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

10 Day Notice to End Tenancy for Unpaid Rent – The landlord's testimony was not disputed during the hearing. The effective vacancy date on the 10 Day Notice is listed as December 13, 2019. Section 26 of the Act applies and requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the Act. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be valid and is upheld as I accept the testimony of the landlord that the tenants failed to pay rent when it was due. Section 55 of the Act applies and 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.**

[Emphasis added]

I have reviewed the 10 Day Notice, which I find complies with section 52 of the Act. Given the above, **I dismiss** the tenants' application to cancel the 10 Day Notice without leave to reapply, due to insufficient evidence from the tenant to support that rent was paid. Therefore, I must grant the landlord an order of possession. As a result, I grant the

landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended December 13, 2019.

Conclusion

I dismiss the tenants' application to cancel the 10 Day Notice.

The tenancy ended December 13, 2019. The landlord is granted an order of possession effective two (2) days after service on the tenants. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenants.

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 27, 2020

Residential Tenancy Branch