



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, FFT

Introduction

On December 1, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

R.L. attended the hearing as an advocate for the Tenants. The Landlord attended the hearing with E.L. attending as an agent for the Landlord. All parties provided a solemn affirmation.

R.L. advised that the Notice of Hearing package was served by registered mail to the Landlord on or around December 4, 2019 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

R.L. advised that the Tenants’ evidence was not served to the Landlord. As this evidence was not served to the Landlord, I have excluded this evidence and will not consider it when rendering this decision. R.L. was permitted to provide testimony with respect to this evidence.

E.L. advised that the Landlord’s evidence was served to the Tenants by registered mail on January 17, 2020 and he provided a registered mail tracking number which confirmed service on this date. R.L. advised that the Tenants did not receive a copy of this evidence. Based on the undisputed testimony, as this evidence was not served to the Tenants in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence is considered late. As such, I have excluded the Landlord’s evidence and will not consider it when rendering this decision. The Landlord and E.L. were permitted to provide testimony with respect to this evidence.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants' Application with respect to the Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2019 and that rent was established at \$2,000.00 per month, due on the first day of each month. A security deposit of \$1,000.00 was also paid.

E.L. advised that the Notice was served to the Tenants on November 22, 2019 by registered mail. The Landlord stated that it was served because of rent that was due on November 1, 2019. The amount listed as outstanding on the Notice was \$2,000.00. It also indicated that the effective end date of the tenancy was November 27, 2019. The Landlord advised that no rent has been paid since November 2019.

R.L. acknowledged that the Tenants received this Notice. He stated that the Tenants withheld the rent because the Landlord did not respond to their requests that some

broken blinds be repaired. However, he confirmed that they did not have any authority under the *Act* to withhold this rent. He also confirmed that no rent has been paid since November 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on November 27, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on November 27, 2019, the Tenants must have paid the rent in full or disputed the Notice on December 2, 2019 at the latest. The undisputed evidence is that the Tenants had not paid rent since receiving this Notice and had made this Application on December 1, 2019. However, R.L. did not establish that the Tenants had a valid reason or any authority for withholding the rent pursuant to the *Act*. As the Tenants did not pay the rent and as they had no authority to withhold the rent, I am satisfied that the Tenants did not comply with the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenants' Application to dispute the Notice in its entirety. I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants 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: January 27, 2020

Residential Tenancy Branch