



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ('the 10 Day Notice') pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

TV ('landlord') appeared as agent on behalf of the landlord, and had full authority to do so. DL appeared for the tenants. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord acknowledged receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidence package. The landlord did not submit any written evidence for this hearing.

The tenant confirmed that the landlord had served 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants on November 8, 2019, with an effective date of November 18, 2019, by way of posting the Notice to the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 10 Day Notice on November 11, 2019, three days after posting.

The tenants applied for more time to make an application to cancel the 10 Day Notice. As the tenants' application was filed on November 14, 2019, I find that the tenants had filed within the time required by the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Both parties confirmed that this fixed-term tenancy began on October 1, 2019, with monthly rent set at \$1,550.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$775.00, which the landlord still holds.

The landlord issued the 10 Day Notice on November 8, 2019 as the tenants failed to pay the November 2019 rent on or before November 1, 2019. Both parties confirmed that the tenants made the following payments after the 10 Day Notice was issued. The tenants paid \$775.00 on November 22, 2019, and a further \$775.00 on December 2, 2019. The tenants paid another \$775.00 on December 30, 2019.

The tenants are requesting the cancellation of the 10 Day Notice as the outstanding November 2019 rent was paid in full. The landlord is seeking an Order of Possession as the tenants failed to pay the outstanding November 2019 rent within the time period required by the *Act*.

Analysis

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.

The undisputed testimony of both parties is that the tenants eventually paid the outstanding November 2019 rent, in partial installments of \$775.00 on November 22, 2019 and the remainder on December 2, 2019. I find that the tenants failed to pay the

outstanding November 2019 rent within five days of being deemed to have received the 10 Day Notice. I find that the tenants did not have an order of an Arbitrator, or permission to withhold these payments. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the outstanding November 2019 rent within five days of the date they were deemed served the 10 Day Notice led to the end of this tenancy on November 21, 2019, the corrected effective date on the 10 Day Notice.

I find that the tenants had failed to pay the outstanding rent within the required time period, and I am dismissing the tenants' application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

Section 55(1) of the *Act* reads as follows:

- 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.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenants' application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of November 21, 2019.

I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant 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 6, 2020

Residential Tenancy Branch