



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord.

The tenant, the landlord's agent and the owner attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset 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 Dispute Resolution Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

This tenancy began on June 24, 2018, monthly rent is \$1,200.00 due on the first day of the month, and the tenant paid a security and pet damage deposit of \$600.00 each.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that the tenants were served with the Notice on January 27, 2020, by attaching the Notice to the tenants' door, listing unpaid rent of \$1,200.00 owed as of January 1, 2020. The effective move-out date listed was February 5, 2020. The tenants submitted the Notice into evidence.

The landlord asserted that since the issuance of the Notice, they have not received rent from the tenants.

Tenant's response-

In response, the tenant confirmed that she has not paid the monthly rent for January or February 2020, due to income assistance issues. The tenant also said she has not been in town for a month, due to the death of her daughter.

The tenant said she was returning to town the night of this hearing and would have the payments for January and February ready, as well as the rent for March by approximately March 5, 2020.

Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

The Notice is not effective earlier than ten days after the date the tenant received it. In this case, the landlord served the Notice on January 27, 2020, by attaching it to the tenants' door. Section 90 of the Act deems it was delivered on the third day, or in this case, January 30, 2020.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of February 5, 2020, on the Notice, is changed to February 9, 2020.

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 the 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.

Pursuant to section 46(1) 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. As the tenants filed their amendment in dispute of the Notice on February 3, 2020, I find that they applied within the required time limit.

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 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 Notice.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenants, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. 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.

Conclusion

The tenants' application is dismissed, without leave to reapply, due to their failure to pay the monthly rent when due.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenants.

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: February 27, 2020

Residential Tenancy Branch