



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Famark Development
Corporation and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes CNC, RP

Introduction

The tenants filed an Application for Dispute Resolution on February 7, 2020 seeking an order to cancel the 10 Day Notice to End Tenancy (the “10 Day Notice”). The tenant also made a request for an order for repairs to the unit. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 20, 2020.

The agent of the landlord attended the hearing; the tenants did not. In the conference call hearing I explained the process and offered the landlord the opportunity to ask questions. I provided the agent of the landlord the opportunity to present oral testimony and make oral submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, delivered in person by the tenant to the rental agency office on February 7, 2020.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the 10-Day Notice pursuant to section 46 of the *Act*?

If the tenants are unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an order of possession pursuant to section 55(4) of the *Act*?

Are the tenants entitled to an order for repairs to the rental unit pursuant to section 32 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented the terms of the tenancy agreement. It was signed on July 31, 2019 by an agent of the landlord, and both tenants. The move-in date was August 1, 2019. The monthly rent was \$900.00 per month, payable on the first of each month. The security deposit was \$450.00.

The landlord issued the 10 Day Notice for February 2020 unpaid rent. This was attached to the tenants' door on February 6, 2020. The agent of the landlord stated that there is usually a five-day chance granted by the management to allow the tenants to pay the rent; in this case, that chance had passed. The landlord stated that he had a witness sign a Proof of Service document; however, that document was not provided as evidence in this hearing.

The landlord also provided a document entitled 'Rental Ledger'. This speaks to the history of rental payments by the tenants on a monthly basis. The landlord stated that the tenants did not pay rent for the months of January – February – March 2020. This shows on the ledger as arrears in the amount of \$2,700.00 for three months of rent. He also stated that he, as the agent of the landlord, asked the tenants if they needed any assistance in making rent payments, to which the tenants did not respond in an appropriate fashion.

Analysis

As the applicant tenants did not attend to pursue the request for repairs, I dismiss this claim without leave to reapply.

In the hearing I informed the agent of the landlord, the attending party, that a request for repairs to the unit was not at issue. This was not the reason for service of the 10 Day Notice. The applicant tenants did not attend the hearing to present their claim on this issue. By Residential Tenancy Rule of Procedure 2.3, I find this issue is unrelated and dismiss this claim without leave to reapply.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlords issued the 10 Day Notice the tenants owed \$900.00 in rent for the month of February 2020. I am satisfied the landlord issued the 10 Day Notice on February 6, 2020, and the tenants received it on that same day. There is no evidence contrary to that of the agent of the landlord presented in the hearing. This finding is also supported by the fact the tenant applied to dispute the 10 Day Notice on February 7, 2020, and acknowledged receipt of the same on February 6, 2020.

The tenants' application to cancel the 10 Day Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10 Day Notice complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements of form and content. The landlord is entitled to an order of possession on the effective date

Conclusion

As the applicant tenants did not attend to present their Application, I dismiss the TTs application for a cancellation of the 10 Day Notice, without leave to reapply.

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 *Act*.

Dated: March 27, 2020

Residential Tenancy Branch