



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, AAT, PSF, CNR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on January 22, 2020, wherein the Tenants sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on January 15, 2020 (the "Notice");
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and,
 - provide services or facilities as required by law; and
- an Order that the Tenants, or their guests, be permitted access to the rental unit.

By Amendment the Tenants also sought more time to make their Application for Dispute Resolution.

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on March 26, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Preliminary Matters

On March 25, 2020, the Provincial Government issued a media release indicating that there would be a moratorium on evictions in British Columbia as a result of the Covid-19 pandemic. As of the time of this hearing no changes have been made to the *Residential Tenancy Act* and *Residential Tenancy Regulation*. As an Arbitrator with delegated authority under the *Residential Tenancy Act*, I am obligated to make my decisions according to the *Act* and *Regulations* as they read on the date of the hearing.

The Tenants confirmed that they wanted an Order that the Landlords provide hard copies of utility accounts, not that they wanted an Order that the Landlords provide services or facilities, which they characterized as a mistake on the Application for Dispute Resolution. The Tenants also confirmed that they did not require an Order for access to the rental unit as they were currently in possession of the unit. Accordingly, I record the Tenants' request for these Orders as being withdrawn.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Should the Tenants be granted more time to make their Application for Dispute Resolution?
2. Should the Notice be cancelled?
3. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation* and/or the residential tenancy agreement?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began October 24, 2019 for a fixed term ending on May 1, 2020. Monthly rent was \$1,400.00 and the Tenants paid a security deposit of \$700.00.

The Landlord issued the Notice on January 15, 2020 indicating the sum of \$1,400.00 was due for rent and \$513.26 for utilities. The Notice further indicated it was personally served on the Tenants on January 15, 2020. The Landlords' agent, M.T., testified that he personally served the Tenant, M.L.

The Landlord's agent confirmed that the Tenants have not paid rent for February or March 2020, nor have they paid for the utilities.

The Tenant, M.L., testified as follows. He confirmed that he received the Notice on January 15, 2020. He further confirmed that he filed for Dispute Resolution on January 22, 2020. The Tenant stated that due to a snow storm he was not able to attend the Service B.C. Office to apply for Dispute Resolution within the required time.

Notably, the Landlords did not dispute the Tenants' request for more time.

M.L. confirmed that they did not pay the January, February and March rent. He stated that he did not pay the rent because from December 30, 2019 to the 8th of January he had difficulty contacting the Landlord. M.L. also stated that he was not provided hard copies of the utility accounts. M.L. also stated that he did not pay rent as they do not have full use of the house and feel as though they are "house sitting" because the house is full of the Landlord's possessions. He also claimed they do not have "peace" at the property as there are 200 police drones going over the property every day.

The Tenant further testified that he was on day 8 of a 14-day quarantine as a patient at his doctor's office tested positive for Covid-19.

Analysis

The Tenants applied for more time to make their Application for Dispute Resolution pursuant to section 66 of the *Residential Tenancy Act*. As noted, this request was not disputed by the Landlord.

I accept the Tenant's testimony that due to a snow storm he was not able to attend the service B.C. office in time to file his Application. I find this meets the definition of exceptional circumstances as contemplated by section 66 and I grant the Tenants' request for more time to make their application.

The Landlords issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

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

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)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

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenant testified that he did not pay rent as he had difficulty reaching the Landlords. He also testified that they were not provided with hard copies of the utility accounts. He also stated that he felt as though they did not have full use of the rental unit due to the presence of the Landlords' items. Finally, he stated that they were disturbed by police drones flying over the rental unit.

As discussed during the hearing the Tenants must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads 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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent. As such, the Tenants have breached section 26 of the *Act* and the residential tenancy agreement.

I therefore dismiss the Tenants' claim for an order canceling the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*. As such, and pursuant to section 55(1) of the *Act*, the Landlords are entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlords were reminded during the hearing that enforcement of Orders of Possession was unlikely during the State of Emergency in British Columbia.

During the hearing the Landlords agreed to provide the Tenants, by email, copies of all utility bills by no later than April 1, 2020. Pursuant to sections 62(3) and 63 of the *Act* I record the Landlords' agreement to the Tenants' request for copies of the utility accounts.

Conclusion

The Tenants' Application for more time to apply to dispute the Notice is granted.

The Tenants' Application for an order canceling the Notice is dismissed.

The Landlords are entitled to an Order of Possession.

The Tenants' requests for an Order that the Landlords provide services or facilities and access to the rental unit are withdrawn.

The Tenants' Application for an Order pursuant to section 62(3) is granted by consent; by no later than April 1, 2020, the Landlords shall provide the Tenants, by email, copies of all utility accounts

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: March 27, 2020

Residential Tenancy Branch