



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

In this dispute, the tenants seek an order cancelling two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the “Notices”), pursuant to section 46 of the *Residential Tenancy Act* (the “Act”). They also seek an order that the landlords comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act. It should be noted that section 55 of the Act requires me to issue an order of possession to the landlord if I dismiss a tenant's application to cancel a notice to end tenancy.

The tenants applied for dispute resolution on January 27, 2019 and a dispute resolution hearing was held on March 31, 2020. One of the tenants, an advocate for the tenant, and both landlords attended the hearing; they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While I have reviewed evidence submitted that met the *Rules of Procedure*, and to which I was referred, I have only considered evidence relevant to the issues of this application.

Issues

1. Are the tenants entitled to an order cancelling either, or both, of the Notices?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants entitled to an order for the landlords to comply with the Act?

Background and Evidence

The landlords testified that the tenancy started on February 5, 2019 and was to end on February 5, 2020. Monthly rent, due on the 27th of the month, is \$1,000.00. The tenants paid a security deposit of \$500.00.

For purposes of clarity, while the rental unit is a manufactured home which sits on a pad in a manufactured home park, the landlords are the manufactured home's owners, and the tenants have a tenancy agreement with the landlords. Thus, the appropriate law which governs this agreement is the *Residential Tenancy Act*, versus the *Manufactured Home Park Tenancy Act*, which governs the legal relationship between the landlords and the park owners.

The landlords testified that the tenants gave them a batch of 13 post-dated cheques at the start of the tenancy. On December 27, 2019, a cheque dated December 27, 2019 was deposited into the landlords' bank account. The cheque came back NSF on January 1, 2020. On January 21, 2020, the landlords issued the first Notice, a copy of which was submitted into evidence. The first Notice was served on January 21, 2020, indicated that unpaid rent was \$1,000.00 (due on December 27, 2019), and that the tenants had to pay rent, or the tenancy would end on January 31, 2020.

On February 29, 2020, the landlords issued a second Notice, this time by attempted in-person service, but then posted on the door after a less-than-cordial interaction between the parties. The second Notice, a copy of which was submitted into evidence, indicated that unpaid in the amount of \$1,000.00 was due January 27, 2020.

According to the landlords, the tenants have not paid rent since the first Notice was issued and have no paid rent for March 2020.

The tenant testified that the landlords took one of last year's cheques and doctored it up to make it look like a newer cheque. The date was allegedly changed from 2019 to 2020. The tenant contacted her bank to initiate a fraud investigation. During her testimony, the tenant explained about the difficult financial position that she and her husband were in and expressed the difficult position of having to raise three young children (a 10-month-old newborn, a 2- and a 5-year old) on limited financial means. She is, she testified, living solely on child tax benefits, which are a little bit above \$1,000.00 a month, and that she had to make the decision between paying rent or having food on the table, among other necessities for childrearing.

Further, the tenant explained that at some point, the landlords were less interested in being paid rent and simply "just wanted us out of the house." The landlords explained that the tenants' failure to pay rent has jeopardized their place in the park.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

At the outset, I note that the tenant or her advocate did not provide any testimony, submissions or argument as to what they sought as it pertains to an order that the landlord comply with the Act, regulations, or the tenancy agreement, pursuant to section 62 of the Act. Given this lack of particulars, I dismiss this claim without leave to reapply.

Regarding the two Notices, section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all

or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service.

The landlords testified that the tenants have not paid rent since 2019. The tenant, while she testified that the landlords had fraudulently altered the cheque for December 27, 2019, did not at any point during the hearing deny that she did not pay rent. Nor did the tenant provide any evidence that there is a fraud investigation underway. Finally, nowhere in her testimony or submissions say that she paid rent for January 27, for February 27, or for March 27, 2020. This absence of a position that she actually paid rent, coupled with her testimony about the extremely limited financial means on which she lives, is, I find, sufficient evidence that the tenants have not paid rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving the ground – that is, non-payment of rent – on which the two Notices were issued.

Section 55(1) of the Act states that

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.

Section 52 of the Act states that

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Having reviewed the two Notices, I find that they comply with section 52 of the Act. Having also found that the Notices were issued for non-payment of rent, I dismiss the tenants' application and grant the landlords an order of possession pursuant to section 55(1) of the Act.

I note that the two Notices were given to the tenants prior to the date on which the *Residential Tenancy (COVID-19) Order*, MO 73/2020, (the "Order") went into effect, and as such this order of possession is granted as permitted under section 3(2) of the Order.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are granted an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia. However, the landlords may wish to reference section 4(3) of the above-noted Order as it pertains to enforcement of the order of possession.

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 31, 2020

Residential Tenancy Branch