



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, PSF, OLC, FFT

Introduction

On March 3, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenants L.O. and J.B. attended the hearing. Landlord J.A. attended the hearing as well. All parties provided a solemn affirmation.

The Tenants advised that they served one Notice of Hearing and evidence package to Landlord B.A. by registered mail and one Notice of Hearing and evidence package to J.A. by hand and he confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords have been served the Notice of Hearing and evidence packages.

J.A. advised that their evidence was served to the Tenants by hand on March 29, 2020 and the Tenants acknowledged receiving this evidence. However, they expressed displeasure with this service as they had never met J.A. before and due to the heightened fears of the pandemic, they were upset that he chose to serve these documents personally, despite changes to the service provisions of the legislation. Despite how this was served, the Tenants had no further position on this evidence. As this evidence was served to the Tenants in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants’ Application with respect to the

Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2019 and that rent was established at \$2,200.00 per month. Rent was due on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$250.00 were also paid.

J.A. advised that the Notice was served to the Tenants on March 2, 2020 by hand. He stated that it was served because of rent that was due on March 1, 2020. The amount listed as outstanding on the Notice was \$2,200.00. It also indicated that the effective end date of the tenancy was March 12, 2020. He also advised that no rent has been paid since this date and that the Tenants did not have any written authorization from the Landlords to withhold the rent.

The Tenants made many references to issues which they believed were breaches of the *Act* that the Landlords did not rectify. They believed this jeopardized their health and safety and required them to rent an AirBnB for a significant period of time. As they paid for this cost out of their own pockets, they were unable to pay for the rent of the rental

unit, but they justified it as the compensation they believed the Landlords owed them. They confirmed that they did not have any authority under the *Act* not to pay the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on March 2, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on March 2, 2020, the Tenants must have paid the rent in full by March 7, 2020 or disputed the Notice on Monday March 9, 2020 at the latest. The undisputed evidence is that the Tenants had not paid rent since receiving this Notice, but they made this Application on March 3, 2020. However, the Tenants did not establish that they had a valid reason or any authority for withholding the rent pursuant to the *Act*. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants did not comply with the *Act*.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenants' Application to dispute the Notice in its entirety. I grant an Order of Possession to the Landlords 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 *Residential Tenancy Act*.

Dated: April 6, 2020

Residential Tenancy Branch