



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 25, 2020 ("One Month Notice"), and to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 1, 2020 ("10 Day Notice").

The Tenants were provided with a copy of the Notice of a Dispute Resolution Hearing on September 11, 2020; however, the Tenants did not attend the teleconference hearing scheduled for Friday, October 23, 2020 at 11:00 a.m. (Pacific Time). The phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Respondent Landlords, J.B. and K.B., who indicated that they were ready to proceed.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlords and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on October 23, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 24 minutes; however, neither the Applicants nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, **I dismiss the Tenants' Application wholly without leave to reapply.**

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the

requirements under section 52, I must grant the landlord an order of possession. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords in the absence of the Tenants.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing, the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants had provided their email address in the Application, and the Landlords gave me their email address at the outset of the hearing. The Landlords also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords said that the tenancy in the single-family dwelling began on December 9, 2015, with a monthly rent of \$1,279.20, due on the first day of each month. The Landlords confirmed that the Tenants paid the Landlord a security deposit of \$600.00, and no pet damage deposit.

10 Day Notice

The Landlords said they served the Tenants with a 10 Day Notice which:

- was signed and dated August 25, 2020,
- has the rental unit address,
- was served by registered mail on August 26, 2020,
- has an effective vacancy date of September 5, 2020, and
- has the ground for the eviction that the Tenants failed to pay \$679.20 that was owing to the Landlord on August 1, 2020.

One Month Notice

The Landlords served the Tenants with the One Month Notice, which:

- was signed and dated September 1, 2020,
- has the rental unit address,
- was served by registered mail sent on September 1, 2020,
- has the effective vacancy date is October 3, 2020, which is automatically corrected to October 31, 2020 by section 53 of the Act, and
- has the ground for the eviction that the Tenants are repeatedly late paying rent.

The Landlords said that there is another RTB proceeding between the Parties scheduled for January 8, 2021.

The Landlords said that they set up a Repayment Plan for the Tenants to catch up on the amount owing in unpaid rent in prior months. The payment plan was for unpaid rent in August 2020, and the repayment plan was to start on October 1, 2020. The repayment amount each month was to be \$226.40 for October, November and December 2020.

The Landlord, J.B., said that the Tenants paid him \$600.00 on August 7, 2020, and that they were short \$679.20 in August. The Landlord said that on September 4, 2020, the Tenants paid the Landlords \$1,279.20, and on September 9, 2020, they paid \$279.20 to the Landlord for rent owing. However, in October 2020, they paid nothing.

The Landlord said that the Tenants were late paying rent in January, February, March, April, July, August, and September 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Ordinarily, a landlord in this situation would be entitled to an order of possession automatically. However, 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 an Arbitrator with delegated authority under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, I am obligated

to make my decisions according to the Act(s) and Regulations, as they read on the date of the hearing.

The question before me is whether the Landlord was authorized to issue a 10 Day Notice and/or a One Month Notice, and whether the 10 Day Notice and/or the One Month Notice are valid and enforceable.

Policy Guideline number 52 ("PG #52") addresses the COVID-19 pandemic, as well as the COVID-19 (*Residential Tenancy and Manufactured Home Park Tenancy Act*) (No. 2) Regulation made under the *Emergency Program Act* and the *COVID-19 Related Measures Act*.

PG #52 states:

Sections 3 and 12 of the C19 Tenancy Regulation provide that a landlord must not give a tenant notice to end a tenancy in respect of affected rent that is unpaid under sections 44(1)(a)(ii) and 46 of the *Residential Tenancy Act* (RTA). Notices to end tenancy for affected rent may only be issued when the conditions set out in the C19 Tenancy Regulation have been met.

"Affected rent" means

- rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020, and
- utility charges that become due to be paid by a tenant during the "specified period" between March 18, 2020 and August 17, 2020, if a tenancy agreement requires the tenant to pay utility charges to the landlord.

The "specified period" is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent:

- April 1, 2020
- May 1, 2020
- June 1, 2020
- July 1, 2020
- August 1, 2020

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required.

10 Day Notice

I find that the Landlord was required to provide the Tenants with a repayment plan for the August 2020 rent owing, rather than issuing a 10 Day Notice. Accordingly, and pursuant to sections 3 and 12 of the C19 Tenancy Regulation, I dismiss this 10 Day Notice without leave to reapply, as the Landlord was not entitled to issue such an eviction notice for rent owing in August 1, 2020.

One Month Notice

While the C19 Regulation states that a landlord must not give a tenant notice to end a tenancy in respect of affected rent that is unpaid under sections 44(1)(a)(ii) and 46 of the Act, it does not include section 47(1)(b) of the Act, which allows a landlord to end a tenancy if the tenant is repeatedly late paying rent.

Further, I find that the One Month Notice is consistent with section 52 of the Act, as to form and content.

Given the frequency of the Tenants' late rent payments throughout 2020, I find that the Landlord is entitled to request an Order of Possession for this tenancy, pursuant to section 47(1)(b) of the Act. I, therefore, award the Landlord an Order of Possession, to be served on the Tenants as soon as possible, pursuant to section 55 of the Act.

Conclusion

The Tenants' Application is dismissed without leave to reapply, as the Tenants or an Agent for the Tenants did not attend the hearing to present the merits of the Application. The Respondent Landlords did attend the hearing.

The Landlords' claim for an Order of Possession for having served a 10 Day Notice is dismissed without leave to reapply. However, the Landlords are successful in their claim for an Order of Possession based on service of the One Month Notice, as the Tenants were repeatedly late paying rent for six of the months leading to the One Month Notice, starting in January 2020.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants, since the effective vacancy date of the One Month Notice has passed. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision will be emailed to the address provided by the Landlords during the hearing and to the email address provided by the Tenants in the Application.

This Decision is final and binding on the Parties, except as otherwise provided under the Act, and 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: October 26, 2020

Residential Tenancy Branch