



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, LRE, OLC, FFT, OPR-DR

Introduction

This hearing dealt with cross-applications filed by the parties. On September 11, 2020, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to restrict the Landlords’ right to enter pursuant to Section 70 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*.

On September 21, 2020, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*.

Both Tenants attended the hearing. D.L. and N.T. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served two, separate Notice of Hearing and evidence packages by registered mail on September 18, 2020 to the Landlords. They stated that they did not check to see if the Landlords could view their digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure. D.L. confirmed that these packages were received; however, only some of the digital evidence could be viewed. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing package. However, as they did not comply with Rule 3.10.5 and as the Landlords were not able to view all of the digital evidence, the video evidence was excluded and will not be considered when rendering this Decision. The remainder of the Tenants’ evidence is accepted and will be considered when rendering this Decision.

D.L. advised that the Tenant was served the Landlords' Notice of Hearing and evidence package by registered mail on September 25, 2020 and the Tenant confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant received the Landlords' Notice of Hearing and evidence package. As such, I have accepted the Landlords' evidence and will consider it when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlords' 10 Day Month Notice to End Tenancy for Unpaid Rent, that the Tenants' other claims would be dismissed, and that they are at liberty to apply for these claims under a new and separate Application.

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 that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the 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, 2018, that rent was established at an amount of \$2,500.00 per month, and that it was due on the first day of each month. Rent was reduced to \$2,400.00 per month shortly after the tenancy commenced due to a reduction in provided facilities. A security deposit of \$1,250.00

was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

D.L. advised that the Notice was served to the Tenant by hand on September 11, 2020 and the Tenant confirmed receipt of this Notice. The Notice indicated that \$2,400.00 was due on September 1, 2020. It also stated that the effective end date of the tenancy was September 21, 2020.

He stated that due to the COVID pandemic, payments for rent were erratic, but the Landlord was fine with this. Up until July 2020, the Tenants even got ahead in rent, due to BC Housing credits; however, the Tenants then only paid \$1,000.00 on August 19, 2020 for August 2020 rent. The Tenants then did not pay September rent that was due on September 1, 2020. As the ban on evictions for non-payment of rent was lifted, the 10 Day Notice was served to the Tenants. On September 15, 2020, the Tenants only paid \$1,000.00, and then only paid \$1,000.00 on October 15, 2020 for October 2020. No rent for November 2020 was paid. He advised that there was no authorization from the Landlord changing when rent was due or reducing the amount of rent down to \$1,000.00 per month.

The Tenants stated that they were advised by N.T. that another person had taken over as owner of the rental unit, and they were in conversation with this person about issues and disturbances that they were having on the property. They claimed to have had a verbal agreement with this person that rent would be reduced to \$1,000.00 per month, they told N.T. of this agreement on September 1, 2020, and N.T. agreed to this verbally as well. However, they did not have any documentation to support that this agreement was made.

They advised that they had been paying rent in the past on the 15th of each month and that they had an email from the Landlord agreeing that the date rent would be due was changed to the 15th. However, they did not submit any documentation to corroborate this position. They then stated that there was a verbal agreement that the day that rent was due was changed. It is their position that the Landlord did not contact them to advise that there was an expectation that rent was now due on the 1st of each month. As well, they confirmed that they only paid \$1,000.00 for September 2020 and \$1,000.00 for October 2020 rent.

N.T. stated that he advised the Tenants that this other person they were referring to would be purchasing the rental unit in the future. He also stated that there was never

any agreement to reduce rent to \$1,000.00 per month or to change the date rent was due to the 15th of each month.

D.L. advised that this other person the Tenants were referring to was not an owner of the property, nor was he acting as an agent for the Landlord. Therefore, he had no authority to make any arrangements pertaining to the rental unit.

At 12:03 P.M., it appeared as if the Tenants exited the teleconference. All parties waited until 12:08 P.M. for the Tenants to return to the hearing; however, they did not return at any point before the hearing concluded.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenants received the Notice on September 11, 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 September 11, 2020, they must have paid the rent in full or disputed the Notice by September 16, 2020, at the latest. The undisputed evidence is that the Tenants did not pay the full amount of rent by September 16, 2020 to cancel the Notice.

While they did dispute the Notice, a significant portion of their submissions pertained to a perceived loss of quiet enjoyment around the property as their justification for withholding the rent. However, they were advised that this was not a valid reason for withholding the rent under the *Act*. Furthermore, while they claimed to have an agreement to a reduced amount of rent and that was due on a date other than what is stipulated on the tenancy agreement, they failed to submit persuasive or compelling evidence to support these claims.

Consequently, I am satisfied that the Tenants failed to establish that they had a valid reason, or any authority under the *Act* for withholding the rent. As the Tenants did not pay the rent in full by September 16, 2020, and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

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*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

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

Conclusion

Based on the above, I dismiss the Tenants' Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent in its entirety. I uphold the Notice and 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: November 4, 2020

Residential Tenancy Branch