



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NU STREAM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 3, 2020 ("10 Day Notice"), pursuant to section 46.

The two tenants did not attend this hearing, which lasted approximately 16 minutes. The landlord's agent ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord stated that he served the tenants with his written evidence package on December 10, 2020, by way of email. I informed the landlord that I could not consider the landlord's evidence, which is a copy of a text message, at the hearing or in my decision because it was served by email, which is not permitted by section 88 of the *Act*. I only considered a copy of the 10 Day Notice, provided by the landlord, since the tenants applied to dispute it in this application and they did not provide a copy of it.

The landlord testified that he personally served the tenants with the landlord's 10 Day Notice on October 3, 2020. He confirmed that the notice indicates an effective move-out date of October 13, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were personally served with the landlord's 10 Day Notice on October 3,

2020. The tenants indicated that they personally received the notice on October 3, 2020 in this application when they applied to cancel the notice.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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 re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on November 1, 2019. Monthly rent in the current amount of \$1,550.00 is payable on the first day of each month. A security deposit of \$775.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,550.00 due on October 1, 2020. The landlord testified that the tenants failed to pay the above rent amount as well as additional rent of \$1,550.00 for each of November and December 2020. The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, tenants may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenants received the notice. The tenants received the 10 Day Notice on October 3, 2020 and filed their application to dispute it on October 8, 2020. Therefore, they were within the five-day time limit to dispute the 10 Day Notice. However, the tenants did not appear at this hearing to present their application.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case required the tenants to pay by the first day of each month.

On a balance of probabilities, I accept the landlord's undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due of \$1,550.00 due on October 1, 2020, within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days or to appear at this hearing to pursue their application, led to the end of this tenancy on October 13, 2020, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by October 13, 2020.

Section 55(1) of the *Act* reads as follows:

55 (1) 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.*

As noted above, I dismissed the tenants' application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application is dismissed without leave to reapply.

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: December 18, 2020

Residential Tenancy Branch