



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MNDCT, RR, PSF, LRE, OLC,

Introduction

On January 5, 2021, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on December 29, 2020, to suspend or set conditions on the Landlords’ right to enter the rental unit, for an order for the landlord to comply with the *Act*, for a monetary order for compensation for my monetary loss or other money owed, to request a rent reduction for repairs, services or facilities agreed upon but not provided, for an order for the landlord to provide services or facilities required by the tenancy agreement or law and for the recovery of their filing fee paid for this application. The matter was set for a conference call.

Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenants' request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenants' claims to suspend or set conditions on the Landlords' right to enter the rental unit, for an order for the landlord to comply with the *Act*, for a monetary order for compensation for my monetary loss or other money owed, to request a rent reduction for repairs, services or facilities agreed upon but not provided, and for an order for the landlord to provide services or facilities required by the tenancy agreement or law.

I will proceed with this hearing on the Tenants' claim to cancel the Notice and recover the filing fee.

Issues to be Decided

- Should the Notice issued on December 29, 2020, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

Background and Evidence

The parties disagreed on the start date of this tenancy; the Landlords testified that this tenancy started on August 1, 2019, and the Tenant's testified that this tenancy started on August 26, 2019. The parties agreed that rent of \$1,200.00 is to be paid each month, and the Landlord is holding a \$600.00 security deposit. Additionally, the parties disagreed on the rent due date for this tenancy, the Landlords testified that rent is due on the first day of each month, and the Tenant's testified that the rent is due on the

tenth day of each month. The parties agreed that there was no signed tenancy agreement for this tenancy.

The Landlords testified that they served the 10-Day Notice to the Tenant on December 29, 2020, by placing a copy of the Notice in the mailbox for the rental unit. The 10-Day Notice has an effective date of November 18, 2018, and an outstanding rent amount of \$3,600.00.

The Landlords testified that as of the date of these proceedings, the Tenants had not paid the outstanding rent indicated on the Notice for October, November, and December 2020.

The Tenant testified that they agreed they had not paid the rent for October, November, and December 2020 for this tenancy.

The Landlords are requesting that the Notice be enforced and that an order of possession is issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect,
or
(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants were deemed to have received the 10-Day notice on January 1, 2021, three days after it was left in their mailbox by the Landlord, and that they did apply to dispute the Notice within the legislated timeline.

I acknowledge the rent payment due date discrepancy testified to by these parties during these proceedings; however, I find that to be a moot point in this decision as the Notice before me, in this case, was issued on December 29, 2020, 19-days after the Tenant's testified was the due date for the rent in this tenancy.

I accept the agreed-upon testimony of these parties that the Tenants have not paid the outstanding rent as stated on the 10-Day Notice within the required five days after receiving the Notice. Therefore, I find that the Tenants are in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenants' application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

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.*

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from a tenant.

Conclusion

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 1, 2021

Residential Tenancy Branch