



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 LL: OPL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants made an Application for Dispute Resolution on February 5, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 30, 2021 (the “10 Day Notice”);

The Landlord’s Application for Dispute Resolution was made on April 1, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for the Landlord.

The hearing was scheduled for 9:30AM on May 10, 2021 as a teleconference hearing. S.M. attended the hearing at the appointed date and time on behalf of the Landlord. No one appeared for the Tenants. The conference call line remained open and was monitored for 12 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.M. and I were the only persons who had called into this teleconference.

S.M. testified the Application and documentary evidence package was served to the Tenants in person on April 6, 2021. Based on the oral and written submissions of the Landlord’s Agent, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on April 6, 2021.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on May 10, 2021.

Rule 7.3 of the Rules of Procedure states that if a party 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. As neither of the Tenants nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

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 is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord's Agent stated that the Landlord purchased the home in December 2020 and that the seller did not provide the purchaser with all the information regarding the terms of the tenancy. The Landlord's Agent stated that he can confirm that the Tenants are required to pay rent in the amount of \$1,500.00 to the Landlord on the first day of each month. The Landlord's Agent stated that the Tenants continue to occupy the rental unit.

The Landlord's Agent testified the Tenants did not pay rent when due for September, October, November, December 2020, and January 2021. The Landlord's Agent stated that the Tenants were subsequently served with a 10 Day Notice dated January 30,

2021 with an effective date of February 10, 2021 by posting it to the Tenants' door on January 30, 2021. The Landlord's Agent testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$7,500.00 to the Landlord for rent relating to the month of September 2020 to January 2021.

The Landlord's Agent stated that the Tenants have not paid any amount of outstanding rent to the Landlord since receiving the 10 Day Notice, and have not paid rent for February, March, April, and May 2021.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent testified that the Tenants were served with the 10 Day Notice dated January 30, 2021 with an effective vacancy date of February 10, 2021 by posting it to the Tenants' door on January 30, 2021. After receiving the 10 Day Notice, the Tenants made an Application to cancel the 10 Day Notice on February 5, 2021. As no one attended the hearing for the Tenants, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenants have not paid the outstanding rent owed to the Landlord.

Under section 55 of the Act, when 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 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court

and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants did not appear at the time of the hearing; therefore, their Application seeking the cancellation of the 10 Day Notice is dismissed without leave to reapply.

The Tenants have failed to pay rent and have breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in 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: May 10, 2021

Residential Tenancy Branch