



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

The tenants dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (“Act”). In addition, the tenants seek to recover the cost of the application filing fee, pursuant to section 72 of the Act.

It should be noted that section 55 of the Act requires that when a tenant seeks to cancel a notice to end tenancy issued by a landlord, the arbitrator must consider if the landlord is entitled to an order of possession if the tenant’s application is dismissed and the landlord’s notice to end tenancy complies with the Act.

An agent for the tenants, and the landlord, attended the hearing on June 14, 2021.

No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on July 1, 2020. A copy of the Residential Tenancy Agreement (the “Agreement”), signed by all three parties on May 20, 2020, was submitted into evidence. The Agreement indicated that the tenancy is a fixed-term tenancy until June 30, 2021.

Monthly rent, as indicated on page two of the Agreement, is \$1,900.00. The rent is due on the first day of the month. The tenants paid a security deposit of \$750.00.

At the bottom of page two, several facilities and services are checked off ("X" marks, to be clear), including water, hot water, electricity, internet, and other items. On the last page of the Agreement, above where the parties signed their names, the Agreement indicates that there is a one-page addendum with eleven additional terms that form part of the Agreement.

A copy of the document titled "Lease Addendum" (hereafter the "Addendum") was submitted into evidence. The first term of the Addendum reads as follows:

1. Due to the effects of the coronavirus outbreak and the lock down ordered by the BC and Federal Governments, the Landlord will reduce the rent as follows:
 - a. Providing the tenant pays rent on the 1st day of every month, the Landlord will reduce the rent to \$1500/month for each month from June 1, 2020 to the end of November, 2020;
 - b. Providing the tenant pays rent on the 1st day of every month, the Landlord will reduce the rent to \$1700/month for each month from December 1, 2020 to the end of November, 2021.

The landlord explained that, because of the difficulty experienced by many people during the pandemic, she voluntarily dropped the rent.

On March 4, 2021, the landlord served a total of four Notices on the tenants. The Notices were posted on the door of the rental unit. For the purposes of this dispute, however, I will only be considering the Notice that was signed on March 4, 2021 and on which it is indicated that the tenants failed to pay rent in the amount of \$200.00 that was due on March 1, 2021. Copies of these Notices were submitted into evidence by both parties.

The landlord testified that the tenants continued to pay the reduced rent of \$1,500.00 beyond the end of November 2020. In other words, instead of paying the reduced rent of \$1,700.00 that went into effect from December 1st onward, they simply paid the \$1,500.00 for every month up to and including rent for June 2021. It was the landlord's contention that the tenants are "trying to take advantage of a situation" by not paying the rent as outlined in the Addendum.

In closing, the landlord remarked that she would “hate to think I can’t offer a rent reduction” but then be faced with tenants disputing the amount they are supposed to pay after the rent reduction ends.

The tenants’ agent provided some background on the tenants and explained that they are from Australia and are here on a work visa. When the tenants signed the Agreement they were apparently unaware of the province-wide rent freeze that was in place.

The agent argued that the rent reduction as outlined in the Addendum was in fact a rent increase, and that the landlord merely attempted to circumvent the Act and regulations by introduction a rent reduction into the Addendum. Indeed, the agent suggested that the landlord ought not to have offered the rent discount to begin with, and that it was all rather confusing. Certainly, the tenants were fully aware of the terms of the Addendum when they signed the tenancy agreement, but at that time the reduced rent of \$1,500.00 was what they “could barely scrape up” enough for.

In rebuttal, the landlord argued that it was the tenants’ choice to accept the terms of the tenancy, including the terms as included in the Addendum. “They knew about [what] the terms were at the time [of signing],” the landlord reiterated. And, finally, if the tenants had difficulty paying the rent for whatever reason, the landlord never heard anything about it.

In closing, the tenants’ agent argued that “having an addendum that outlines a rent increase is concerning.”

As an aside, both parties provided testimony about a previous disagreement involving who was responsible for paying hydro. However, as the application before me concerns itself with the Notice and given that the utilities issue is unrelated to the Notice, I will not address or otherwise reproduce any further evidence on this matter.

Analysis

As a starting point, it is worth citing section 26, which concerns the payment of rent:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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(1) of the Act states that

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) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution. The latter occurred.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the written Agreement clearly states that monthly rent is \$1,900.00. This amount is plainly printed on page two of the Agreement. Thus, to argue that there occurred a rent “increase” is absurd. The Addendum – of which the tenants were fully aware when they signed the Agreement – clearly and unequivocally states that the \$1,900.00 rent is reduced to \$1,500.00 and then, after a certain period of time, only to \$1,700.00. The Addendum created a legal arrangement whereby, instead of requiring the tenants to pay the full rent, the landlord would accept a temporarily discounted, or reduced, rent. Indeed, the language within the Addendum is clear: the word “reduce” is used, which means that the rent is decreased to the amounts set out in the Addendum. Nowhere in the Agreement, which is the governing, primary contract between the parties, does it state that rent is either \$1,500.00 or \$1,700.00.

For these reasons, I find that the reduced rent that the tenants were required to pay after December 1, 2020 was \$1,700.00. They failed to pay the discounted rent of \$1,700.00 from December 1 onward, but instead continued to pay the more heavily discounted rent of \$1,500.00. There is, I find, no rent increase, because rent was, from the very beginning of the tenancy, \$1,900.00. It was the tenants’ choice to sign a tenancy Agreement which provided for a rent discount within a finite period of time.

As an alternative (and I only include this for the parties’ edification), it is important to note that section 43(1)(c) of the Act states that “A landlord may impose a rent increase only up to the amount [. . .] agreed to by the tenant in writing.” In other words, if the tenants’ hypothetical position is, or was, somehow that the rent was \$1,500.00, then any “increase” to \$1,700.00 was in fact agreed upon in writing by the parties at the time they signed the Agreement. Quite simply, no rent increase has occurred in this case.

In summary, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants failed to pay the reduced monthly rent of \$1,700.00 on December 1, 2020 and for each month thereafter.

Having reviewed the Notice (for the unpaid rent of \$200.00 due on March 1, 2021), I find that it complies with section 52 of the Act. Thus, I uphold the Notice and the tenants' application is dismissed. The tenants' claim for the filing fee is similarly dismissed.

Section 55(1) of the Act states that where a tenant's application to dispute a notice to end tenancy is dismissed, I am required to grant to the landlord an order of possession.

Therefore, pursuant to section 55(1) of the Act, I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenants.

Conclusion

I dismiss the tenants' application, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 14, 2021

Residential Tenancy Branch