Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence in person. The landlord confirmed these details with the exception that a copy of the signed tenancy agreement was not provided as part of the tenants' evidence package. However, the landlords stated that this was not an issue as they have before them a copy of the tenancy agreement. The tenants argued that a copy of the tenancy agreement was included in the package but are not able to provide any proof of service of this document to the landlords. The landlords did not submit any documentary evidence as they had assumed that by the tenants referencing a previous dispute resolution decision that all evidence in that file would be made available for this hearing. Neither party raised any other service issues. I accept the affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act. In this case, the issue of a missing copy of the signed tenancy agreement, I find to be unimportant. However, if the

contents of the signed tenancy agreement is disputed in any form, both parties will be given a detailed description of the document and an opportunity to make any arguments if necessary. On this basis, I find pursuant to section 71 of the Act that both parties have been sufficiently served with the submitted documentary evidence. No submissions were made by either party regarding the signed tenancy agreement.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants dispute the landlords' 10 Day Notice for Unpaid Rent dated March 4, 2021. The 10 Day Notice states that the tenants failed to pay rent of $90.00 that was due on March 1, 2021 and displays an end of tenancy date of March 13, 2021. The tenants argued that in another Residential Tenancy Branch Dispute Decision dated April 19, 2021 within the Analysis portion of the Decision that it clearly states that the tenants paid rent.

However, extensive discussions took place with both parties in their interpretation of that decision. It reads in part,

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

At the outset, it is worth noting that the tenants are not bringing an application to dispute a rent increase, as would be done under sections 41 through 43 of the Act. Rather, they bring a claim for compensation for rent that they say was improperly overcharged.

Neither party disputed that the tenants began paying $45.00 more in rent in October 2019. The parties also did not dispute the fact that everyone accepted the higher rent. Indeed, and this is important: the tenants themselves testified that "we agreed" to the rent increase. The parties disagree, however, as to whether the landlords issued or provided any "paperwork." Paperwork involved in a rent increase under the Act would ordinarily include a notice of rent increase issued under section 42(2) of the Act. Given the landlords' apparent unfamiliarity with the Act, including their failure to use the proper notice to end the tenancy, and the remark that they are not "professional landlords," I think it it unlikely that they ever provided or produced the necessary paperwork.

That said, the tenants nonetheless agreed to the $45.00 rent increase, and, in fact, paid the increased rent without any apparent objection for a period of 13 months. For this reason, I find that the tenants are prevented from claiming compensation on the basis of a legal principle known as estoppel.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, the tenants' failure to object to paying $45.00 more in monthly rent for a period of over a year, and considering their agreement to pay this higher amount at the outset, created a pattern of the tenants' failing to assert their right of not having to pay the additional rent. For this reason, I decline to award the tenants any compensation for the amount that they have willingly paid for 13 months. Thus, this aspect of their application is dismissed without leave to reapply.

That said, this application, and the claim for the higher rent (which, by all accounts was not established to have been correctly done under section 41 of the Act), shall

constitute written notice that the tenants intend to proceed on the basis that monthly rent is $1,800.00. Monthly rent is, I order, to be in the amount of $1,800.00, and rent may not be increased except in strict accordance with the Act and the regulations. [reproduced as written]

In that decision, the tenants were seeking compensation in the form of recovery of "overpaid rent" of $45.00 per month. The Arbitrator found in that decision that Estoppel occurred, in that the tenants agreed by their conduct by paying the additional $45.00 per month for that period of time. That compensation request was dismissed however a finding was made in the decision dated April 19, 2021 that monthly rent was $1,800.00 and due to the tenants' filing of the application for dispute and that as of April 19, 2021, monthly rent is $1,800.00 that this was notice to the landlord that they no longer accept the additional $45.00 monthly rent and will now going forward strictly enforce their rights.

The tenants stated that they interpreted the monthly rent to be retroactive to the date of their application and as a result did not pay the additional $45.00 per month.

The landlords confirmed that the 10 Day Notice sets out unpaid rent of $90.00 which the landlords clarified as $45.00 for February and $45.00 for March 2021. The landlord also notes that as the decision dated April 19, 2021 that $45.00 for April was also not paid.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the affirmed testimony of both parties and find that the 10 Day Notice dated March 4, 2021 was properly served by posting it to the rental unit door. The landlord provided undisputed affirmed evidence that the $90.00 in unpaid rent was for $45.00 for February and $45.00 for March 2021. I also accept the undisputed affirmed evidence of the landlord that an additional $45.00 for April 2021 was not paid as the decision issued by the Arbitrator in the previous decision was not issued until April 19, 2021 and that via Estoppel the tenants' by their conduct agreed to the monthly rent of $1,845.00. As such, I find that the 10 Day Notice dated March 4, 2021 to be valid and is upheld. The tenants' request to cancel the 10 Day Notice is dismissed without leave to reapply. The landlords are granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date of March 13, 2021 has now passed.

Pursuant to section 55 (1.1) as that landlords' 10 Day Notice has been found valid and an order of possession has been granted, the landlord is granted a monetary order for unpaid rent of $135.00 equal to the $45.00 per month for February, March and April 2021.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for $135.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: July 13, 2021

Residential Tenancy Branch