



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant stated that on December 13, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in December of 2021 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In March of 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on March 03, 2022. The Landlord submitted Canada Post documents that corroborate this testimony. On the basis of the evidence presented by the Landlord, I accept that the Landlord's evidence was served to the Tenants in accordance with section 88 of the *Residential Tenancy Act (Act)*.

The Tenant stated that they have been having trouble with mail delivery recently and that they did not receive any notification of registered mail from the Landlord. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenants did not receive the documents that were sent to them by registered mail.

The parties were advised that the Landlord's evidence was not accepted as evidence for these proceedings, as there was insufficient evidence to establish that it was received by the Tenants.

The parties were advised that the hearing would proceed, that the Landlord could discuss his documentary evidence during the hearing, and that if, at the end of the hearing, the Landlord deemed it necessary for me to view his physical evidence the hearing would be adjourned for the purposes of re-serving that evidence to the Tenants. At the conclusion of the hearing the Agent for the Landlord and the Landlord declared that an adjournment was not necessary.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2018 and that the Tenants agreed to pay monthly rent of \$1,800.00 plus utilities.

The Landlord and the Tenants agree that the tenancy agreement declares rent is due, in advance, by the last day of each month, however both parties understood the rent was due by the first day of each month.

The Landlord and the Tenant agree that the Tenants still owe \$850.00 in rent from April of 2021 and that no rent has been paid for any period after April 30, 2021.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the female Tenant on November 30, 2021, which declared that the rental unit must be vacated by December 10, 2021.

Analysis

On the basis of the undisputed evidence I find that the Tenants were required to pay rent of \$1,800.00.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As no evidence was presented to establish that the Tenants had the right to withhold rent, I find that the Tenants still owe \$850.00 in rent for April of 2021 and \$12,600.00 for the period between May 01, 2021 and November 30, 2021.

Section 46(1) of the *Act* stipulates 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 ten days after the date the tenant receives the notice. As the Tenants owed an extensive amount of rent on November 30, 2021, I find that the Landlord had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute was received by the female Tenant on November 30, 2021.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenants have not paid all of the rent that was due by November 30, 2021, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I find the Landlord is entitled to a monetary Order, pursuant to section 55(1.1) of the *Act*, for rent that is outstanding for the period between April 01, 2021 and November 30, 2021, which is \$13,450.00. As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ended the tenancy on December 10, 2021 and the Tenants had the legal right to remain in the unit until that date, the Landlord is also entitled to per diem rent of \$580.60 for the period between December 01, 2021 and December 10, 2021.

I am unable to award compensation for any period after the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which is December 10, 2021. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for any rent/lost revenue that has accrued since December 11, 2021.

Conclusion

The Tenants' application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective on March 31, 2021.

This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord is granted a monetary Order for \$14,030.60. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: March 22, 2022

Residential Tenancy Branch