



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, RP

Introduction

On April 18, 2022 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for an Order requiring the Landlord to make repairs.

The teleconference hearing was scheduled for 11:00 a.m. on this date. The Landlord was represented at the hearing at the scheduled start time but by the time the teleconference was terminated at 11:11 a.m. the Tenant had not appeared.

The Agent for the Landlord stated that the Tenants did not serve the Landlord with any documents regarding these proceedings. He stated that the Landlord became aware of the hearing because another agent for the Landlord was provided the hearing information by the Residential Tenancy Branch when that agent for the Landlord was discussing other issues regarding this tenancy with the Residential Tenancy Branch.

As the Tenants did not serve the Dispute Resolution Package to the Landlord, I find that the Tenants failed to diligently pursue the Application for Dispute Resolution and I therefore dismiss the Application without leave to reapply.

The Landlord was given the opportunity to make submissions in regard to whether an Order of Possession should be granted.

Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should an Order of Possession be granted to the Landlord?

Background and Evidence

The Agent for the Landlord stated that:

- The tenancy began on October 01, 2019;
- The Tenants are currently required to pay rent of \$1,801.00 by the first day of each month;
- The Tenants did not pay all of the rent when it was due on April 01, 2022;
- On April 14, 2022 the Landlord served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, by placing it in their mailbox;
- The Landlord has a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 14, 2022, which is the notice to end tenancy being disputed by the Tenants;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by April 27, 2022;
- On April 21, 2022 rent for April was paid, in full; and
- A \$3.00 credit was applied to rent for May of 2022, leaving a balance due of \$1,798; and
- Rent has not been paid for June of 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were required to pay rent of \$1,801.00 by the first day of each month and that they did not pay rent for April of 2022, in full, until April 21, 2022.

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 10 days after the date the tenant receives the notice. As the Tenants did not pay rent when it was due on April 01, 2022, 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 Landlord served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, by placing it in their mailbox on April 14, 2022. In the Application for Dispute Resolution the Tenant declared that this Notice to End Tenancy was received on April 14, 2022. Although a copy of this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was not served to the Landlord by the Tenants, I find it reasonable to consider that Notice, as the Landlord has a copy of it.

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. On the basis of the undisputed evidence, I find that the rent for April was paid, in full, on April 21, 2022. As the Tenants did not pay the overdue rent within 5 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that section 46(4)(a) of the *Act* does not apply.

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 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*.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, 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: June 23, 2022

Residential Tenancy Branch