



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 4, 2022 (10 Day Notice) and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. Although tenant CL was 20 minutes late calling into the hearing; they were permitted to participate fully in the hearing. All parties were affirmed. No documentary evidence was provided by either party. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

Both parties confirmed their respective email addresses. As a result, the decision will be emailed to both parties.

Background and Evidence

Although no tenancy agreement was submitted, the parties confirmed that a month-to-month tenancy began on May 15, 2021. The parties also agreed that monthly rent is \$2,500 per month and is due on the first day of each month.

As neither party submitted a copy of the 10 Day Notice, and the tenants both confirmed they did not have a copy before them during the hearing, the landlord was able to confirm the following details, none of which were disputed by the tenants, in terms of the content of the 10 Day Notice. The 10 Day Notice was signed and dated and included the name of the landlord. The issue date on the 10 Day Notice was September 4, 2022

and the effective vacancy date was September 14, 2022. The landlord testified that they served the 10 Day Notice by posting to the tenants' door on September 4, 2022.

The tenants write in their application that they received the 10 Day Notice posted to their door on September 8, 2022. The tenants filed their application to dispute the 10 Day Notice on September 12, 2022. The landlord wrote that \$5,250 was owed as of September 1, 2022. The landlord stated that \$250 was owed for July 2022 balance of rent, all of August 2022 rent of \$2,500 and all of September 1, 2022. Both parties testified that the tenants did not pay the \$5250 owing within 5 days of September 8, 2022. The landlord stated that only \$4,000 was paid by the end of September 2022. The tenants were unable to provide specific dates when the late rent was paid. Tenant CL confirmed they could not recall specific dates and did not have the information in front of them as they were calling in from work for the hearing.

The landlord was asked if they wanted to continue the tenancy if the tenants could pay the rent on time, and the landlord stated no as the tenant called him a "motherfucker." The tenant explained that said that in response to the landlord looking through their windows, which the landlord did not confirm they did during the hearing.

The tenants write in their application the following:

"due to financial and medical emergency . also due to a lack of housing for my 14th month old son and wife if we are forced out of rental unit . due to some emergencies and medical issues including my son having to have open heart surgery and obvious aftercare we have been mentally and financially strained . however we are able to afford the rental unit moving forward . Also I am disputing because the rental address on the Notice is legally incorrect."

[reproduced as written]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As neither party supplied a copy of the 10 Day Notice, I afford no weight to the allegation that the rental unit was incorrect as I find the tenants would know or ought to have known that they were disputing a 10 Day Notice related to the rental unit by filing their application for that purpose on September 12, 2022.

The details provided during the hearing regarding the 10 Day Notice leads me to find that it complied with section 52 of the Act as the parties confirmed it was signed and dated, and included the amount owing and when it was due.

I also find that the tenants confirmed that they failed to pay the \$5,250 owing comprised of \$250 for July 2022 rent balance, \$2,500 rent for August 2022, and \$2,500 for September 2022 rent within 5 days of receiving the 10 Day Notice on September 8, 2022. The landlord confirmed that as of the date of the hearing, January 27, 2023, the tenants have caught up on rent and have paid the last \$500 owing for January 2023 paid the day before the hearing on January 26, 2023.

Under section 26 of the Act, tenants are required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I find the tenants have provided insufficient evidence of any need for emergency repairs due to the lack of any documentary evidence including no receipts or invoices, photos, etc. Pursuant to section 46(1) of the Act, when tenants fail to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the 10 Day Notice, the tenants must pay the outstanding rent listed or file an application in dispute of the 10 Day Notice within five (5) days. When a 10 Day Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent. Based on the testimony of the tenants and the landlord, I find the tenants failed to pay the full amount of rent arrears within 5 days of September 8, 2022.

Given the above, I dismiss the tenants' application due to insufficient evidence, without leave to reapply and I uphold the 10 Day Notice, which I find is valid.

Order of Possession – Given the above, I find the tenancy has ended based on the tenants' failure to pay rent owed and the landlord is entitled to possession of the rental unit. The Act does not provide an exception for personal or financial hardship. Therefore, I find the tenancy ended on September 18, 2022, which I find is the corrected effective vacancy date which automatically corrects pursuant to section 53 of the Act.

As the tenants continue to occupy the rental unit and all parties confirmed that money has not been paid for February 2023 as of the date of the hearing, **I must** grant the

landlord an order of possession for the rental unit pursuant to section 55(1) of the Act, which applies and states:

Order of possession for the landlord

55(1) 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**

- (a) **the landlord's notice to end tenancy complies with section 52** *[form and content of notice to end tenancy]*, and
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above, I grant the landlord an order of possession effective **2 days after service upon the tenants** pursuant to section 55(1)(b) of the Act.

I do not grant the filing fee as the tenants' application has been dismissed without leave to reapply, due to insufficient evidence.

Conclusion

The tenants' application fails and is dismissed without leave to reapply.

The tenancy ended on September 18, 2022.

The landlord has been granted an order of possession of the rental unit effective two (2) days after service on the tenants, which must be served on the tenants by the landlord. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The tenants are cautioned that they can be held liable for all costs related to enforcement of the order of possession including but not limited to bailiff fees and court costs.

The decision will be emailed to the tenants and landlord.

The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 27, 2023

Residential Tenancy Branch