



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on February 22, 2023, and to have the landlord comply with the Act.

Both parties appeared, gave **affirmed testimony**, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants’ request to set aside the Notice. The balance of the tenants’ applications is dismissed.

The tenants confirmed they received the landlord’s evidence. Legal counsel stated that the landlords received the Notice of Hearing by email; however, they, did not receive any evidence from the tenants.

I have reviewed the evidence submitted by the tenants and most of the evidence is not relevant to the issue of unpaid rent. and will not be consider.

I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on September 21, 2022.. Rent in the amount of \$2,350..00 was payable on the first of each month. A security deposit of \$1,175.00 was paid by the tenants. Filed in evidence is a copy of the tenancy agreement.

The tenants testified that they received the Notice of February 23, 2023. Filed in evidence is a copy of the Notice.

The tenants testified that they paid January 2023, rent on January 3, 2023 and they paid rent for February 2023, on February 1, 2023 as they always pay their rent on time and in cash and the landlord fails to give them a receipt.

Legal counsel for the landlord stated that the tenants never paid the landlords the rent for January, February and now March 2023 is owed. Counsel submits that the tenants are not honest when they say rent is always paid on time and by cash.

Counsel submits October 2022, rent was paid by etransfer on October 11, 2022, by a third pay organization that helps with rent and the November 2022 rent was paid on November 28, 2022, and rent was December 2022 was paid in advance and the landlord did issue the tenants a rent receipt in the amount of \$4,700.00.

Counsel submits that the landlord has provided text messages between the parties showing that the rent has not been paid and other supporting documents.

The landlord testified that the documents dated January 11, 2023, were given to them by the tenants. The landlord stated that the first one which they signed was so the tenants could receive funding to help with pay their rent.

The landlord testified that they and the tenants were to attend a government agency to help resolve the unpaid rent issue; however, the tenants did not show up and as a result they issued the Notice.

The tenants responded that they do not know anything about the documents dated January 11, 2023. The tenants stated that they issued the landlord a bank draft on

February 14, 2023, for \$1.00, because the bank wanted to trace the bank draft to see where it was going.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires tenants to pay rent on time regardless of if the landlord has breached the Act, unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

I do not accept the tenants' testimony that they paid rent for January 2023, on January 3 and rent February 2023, was paid on February 1, 2023. The landlords have provided extensive text messages between the parties to show that this is simply not true.

I do not accept the tenants' witness statement of DM, dated February 25, 2023, which simply says they can testify that all the security deposit and rent have been paid on time. This is not true simply by looking at the history or rent payments and it appears this person was not even physical present for the alleged cash payments. Furthermore, in the text messages the tenants were asking DM if they would send the landlords an e-transfer for the rent, which is inconsistent with the testimony of the tenants which was rent was paid on the date it was owed and in cash.

Further, it would make no sense for the tenants to provide the landlords with a bank draft in the amount of \$1.00, so the bank could track where funds were going if the tenants had paid in cash. this is not logical.

I find the tenants have failed to prove rent was paid for January 2023, February 2023, and March 2023. I would expect at least see they are banking records to prove they had the money in their account and that it was withdrawn on the dates it was said to have

been paid and text messages to show they were coming to pay the rent. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenant's application is dismissed, I find the landlords are entitled to an order of possession, pursuant to section 55(1) of the Act. I further find the landlords are entitled to a monetary order pursuant to section 55 (1.1) of the Act for the unpaid rent..

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the landlord is entitled to a monetary order, pursuant to section 55(1.1) for the unpaid rent January, February and March 2023, in the amount of **\$7,050.00**. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession.

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 27, 2023

Residential Tenancy Branch