



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenants seek an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on March 3, 2023 (the “10-Day Notice”).

J.D. appeared as the Landlord’s agent. J.S. and M.S. also appeared on behalf of the Landlord though did not provide submissions at the hearing.

The Tenants did not attend the hearing, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend the hearing for their own application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent acknowledges receipt of the Tenants’ application materials.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and unpaid rent?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on December 15, 2022.
- Rent of \$3,000.00 is due on the first of each month.
- A security deposit of \$1,500.00 was paid by the Tenants.

I am provided with a copy of the tenancy agreement confirming these details.

The Landlord's agent testifies that the Landlord served the 10-Day Notice on the Tenants by personally delivering it on March 3, 2023. The 10-Day Notice provided to me shows that rent \$3,500.00 was due as of March 3, 2023. An accounting of these arrears are set out in an invoice provided to me by the Landlord's agent, which he says was served on the Tenants when the 10-Day Notice was served on March 3, 2023.

The Landlord's agent advises that the Tenants and the Landlord agreed to a payment plan, the details of which are outlined in an email dated March 16, 2023 a copy of which was given to me by the Landlord. The email states the following:

Hi [Tenants],

Today we received Notice of Dispute Resolution Proceeding from the BC Residential Tenancy Board scheduling both parties for a hearing on **Monday, April 3rd, 2023 at 2:30pm Pacific Time.**

I understand there have been difficulties paying rent as you experienced an accident preventing you from making income as you stated you have applied for assistance.

Prior to our hearing, we would like to offer a possible solution to help assist you and Ben in catching up on rent payment so you do not fall further behind in April.

We would be willing to put you both on a payment plan for the rent outstanding of \$3500 over the next 12 months. On the first of each month, beginning in April,

$\$3000 + \$291.67 = \$3291.67$. This term would go on for 12 months from April and would complete all outstanding rent due to date. Of course, we would be willing to work with you both in terms that you honor the agreement and pay on time. In the event the agreement isn't being honored by your party, we would proceed with BC Residential Board process of terminating the lease agreement.

To date, it has been difficult getting a hold of you both as [Tenant B.] current phone number on file is currently inactive and has not been provided to us his new one. Could you provide us his contact information?

We will still continue with an hearing on April 3rd, 2023 in order for BC Residential Board to help with a solution for both

Regards,
[Landlord's Agent]

I have redacted personal identifying information in the interest of the parties' privacy. The Landlord's agent advises that the Tenant had agreed to the payment plan but failed to pay rent in full on April 1, 2023, only paying \$1,750.00 in total.

The issue with the present circumstances is that the 10-Day Notice, and its enforceability, is premised on a finding that rent has not been paid and the notice not being withdrawn. In this instance, I accept that rent has not been paid. However, the parties agreed to settle the issue of unpaid rent as evidence in the email of March 16, 2023. Depending on the terms of the settlement, it may result in the Landlord being estopped, or prevented, from enforcing the 10-Day Notice if the notice had been withdrawn as per the settlement.

I have reviewed the email of March 16, 2023, which I interpret as comprising a total settlement offer on the part of the Landlord that was accepted by the Tenants in its entirety. The email sets out the terms of the payment plan and stipulates that failure to honour the agreement would result in the Landlord proceeding with the Residential Tenancy Branch process and terminating the lease. There is also mention that the Landlord would continue with the hearing on April 3, 2023 in order to find a solution that would work for both parties.

On its face, the threat of future action is ambiguous. The threat of ending the tenancy could be interpreted to mean that failing to adhere with the payment plan would result in

the Landlord proceeding with the hearing on April 3, 2023 to enforce the 10-Day Notice. However, it could just as easily mean that the Landlord would proceed with ending the tenancy once more should the Tenants fail to pay in accordance with the terms of the settlement.

Given the lack of explicit language to the effect that the Landlord would seek to enforce the 10-Day Notice on April 3, 2023 if the settlement was not adhered to on April 1, 2023, I find that the agreement on the payment plan comprises a settlement on the issue of unpaid rent up to March 16, 2023 and that, in so doing, the Landlord withdrew the 10-Day Notice. This interpretation adheres with the doctrine of contra proferentem, which stipulates an ambiguous term is to be interpreted against the interests of the offeror particularly when there is a power imbalance between the parties. I find that this doctrine is applicable under the circumstances.

As the 10-Day Notice was withdrawn upon the acceptance of the Landlord's settlement offer, the 10-Day Notice cannot now be enforced by the Landlord. I find that the Landlord is prevented from enforcing on the 10-Day Notice and that the 10-Day Notice is of no force or effect.

Conclusion

I grant the Tenants' application cancelling the 10-Day Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

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: April 05, 2023

Residential Tenancy Branch