



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me to cancel a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 18 April [the '10-day Notice'].

The landlords appeared at the hearing on 16 June 2023. The tenants did not.

Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 0930 hours and ended within 40 minutes. I confirmed:

1. that on 24 April the RTB provided to the tenants the correct call-in numbers and participant codes in the Notice of Hearing;
2. that the RTB had reminded the tenants of this hearing *via* e-mail on 30 May, and with a 'phone call on 5 June; and
3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing, but I conducted it in their absence. I was satisfied that the tenants had notice of this hearing and how to participate.

Issue to be Decided

As the tenants failed to participate in this hearing, I dismiss their application without leave to re-apply.

This leaves me with the following issues:

Should I uphold the 10-day Notice?

Are the landlords entitled to unpaid rent?

Background and Evidence

The landlords told me the following about this tenancy:

1. it began last May, and was intended to last for one year;
2. in February, the landlords served the tenants with a four-month notice to end tenancy on 30 June [the 'Four-month Notice'];
3. rent is \$3,300.00 *per* month, due on the first day of each month; and
4. the tenants paid a security deposit in the amount of \$1,650.00.

On 1 April the tenants paid only \$650.00 rent. And so the landlords drafted the 10-day Notice. In drafting this notice, they told me that they:

1. used the form approved by the RTB;
2. signed and dated the 10-day Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the 10-day Notice as 29 April 2023; and
5. stated the basis for the 10-day Notice as the Applicant's failure to pay rent in the amount of \$2,650.00, due on 1 April.

The landlords served this 10-day Notice in person on 18 April. And I note from RTB records that the tenants applied to dispute this notice on or about 22 April.

Since serving the 10-day Notice on the tenants, the landlords told me that the tenants have continued to live in the unit, and have continued to fail to pay rent. At the time of

this hearing, that meant that the tenants had not paid rent for May and June. But the landlords told me that the tenants are entitled to withhold rent for June because of the Four-month Notice, and so are not seeking rent for June.

Analysis

Though this is an application by the tenants to cancel the 10-day Notice, and the tenants have not prosecuted their application, section 55 (1) of the *Residential Tenancy Act* [the 'Act'] still requires me to grant an order of possession if the 10-day Notice is effective.

And section 52 of the Act tells us that for a notice to end tenancy to be effective:

1. a landlord must sign it and date it;
2. it must give the address of the rental unit, and state the effective date of the notice;
3. it must also state the grounds for ending the tenancy; and
4. it must be in an RTB form.

Based on the uncontroverted evidence at this hearing, I find the 10-day Notice is an effective one, and should be upheld. As the landlords personally served the 10-day Notice on 18 April, the tenancy ended on 28 April (*per* section 46 (1) of the Act).

Accordingly, the Act requires me to grant an order of possession.

Furthermore, section 55 (1.1) of the Act requires that, in these circumstances, I also order that the tenants pay the landlords unpaid rent for April and May. This totals \$5,950.00 [*i.e.* \$2,650.00 for April and \$3,300.00 for May].

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I order that the tenants pay to the landlords \$5,950.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' security deposit of \$1,650.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 21 June 2023

Residential Tenancy Branch