



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNC, LRE, FFT
 TT: CNR, CNOP, FFT

Introduction

This hearing dealt with the Tenants' repeated Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*").

The Tenants' first Application for Dispute Resolution was made on June 1, 2024 (the "Tenant's first Application"). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause;
- an order restricting the Landlord's right to enter the rental unit; and
- an order granting the recovery of the filing fee

The Tenants' second Application for Dispute Resolution was made on June 16, 2024, (the "Tenants' second Application"). The Tenants applied for the following relief, pursuant to the *Act*:

- an order to cancel a 10 Day Notice for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing and provided affirmed testimony.

The parties agreed that the Tenants did not serve the Proceeding Package and evidence relating to the Tenants' first Application to the Landlords. As the Tenants did not serve the Proceeding Package, I find that the Tenants first Application is dismissed without leave to reapply.

The Landlord's confirmed receipt of the Tenants' second Application. The Tenants confirmed receipt of the Landlord's evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act.

Preliminary Matters

The parties agreed that they took part in a previous Dispute Resolution Hearing on May 16, 2024. The File No. relating to the previous hearing is recorded on the cover page of this Decision. The parties agreed that they had come to a mutual agreement whereby the Tenants were required to pay May 2024 rent in the amount of \$2,375.00 to the Landlords no later than June 15, 2024. The parties agreed that the Landlords were provided a monetary order in the amount of rent owed.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice dated June 16, 2024 (the "10 Day Notice")?
2. Are the Tenants entitled to an order granting the return of the filing fee?
3. If unsuccessful, are the Landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2021. Currently, rent in the amount of \$2,375.00 is due to the Landlord on the last day of each month. The Tenants paid a security deposit in the amount of \$1,100.00. The Tenants stated that they paid a pet deposit in the amount of \$500.00, whereas the Landlord and the Tenancy Agreement submit into evidence indicates that the Tenants were required to pay a pet deposit in the amount of \$400.00.

The Landlords stated that the Tenants failed to pay May 2024 rent to the Landlords. As previously noted, the parties had agreed to the extended the due date of May 2024 rent to no later than June 15, 2024. The Landlords stated that the Tenants failed to pay any amount of rent towards May 2024 outstanding balance.

The Landlords testified that they subsequently emailed the Tenants a 10 Day on June 16, 2024 with an effective vacancy date of June 26, 2024. The Landlord stated that the amount of unpaid rent owing is \$2,375.00.

The Tenants confirmed receipt on the same day. The parties agreed that the Tenants have not made any payments towards the unpaid May 2024 rent since receiving the 10 Day Notice.

The Tenants stated that they wanted the Landlords to provide them with a payment plan as the Tenants are unable to afford paying May 2024 rent. The Tenants confirmed that after receiving the 10 Day Notice, they have made no payments towards the outstanding balance of May 2024 rent. The Tenants stated that if evicted, they would not pay the Landlords any rent, therefore, it would be in their best interest to continue the tenancy and agree to a payment plan. The Landlords refused and are seeking an end to the tenancy.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states 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.

I find that the Landlords served the 10 Day Notice to the Tenants on June 16, 2024. The Tenants confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenant made an Application to cancel the 10 Day Notice on June 16, 2024, I accept that the parties agreed that the Tenants have not paid any amount towards the outstanding balance of unpaid May 2024 rent.

While the Tenants were hoping that the Landlord would agree to a payment plan, I find that the Landlord is not obligated to provide the Tenants with a payment plan. I find that the Tenants agreed to pay May 2024 rent no later than June 15, 2024 based on the outcome of the previous hearing and had failed to do so. Furthermore, the Tenants had a further 5 days to pay the balance of rent owing, according to the 10 Day Notice. I find that they failed to pay rent owed to the Landlords. As such, I find that the Tenants are conclusively presumed to have accepted the end of the tenancy.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 7 (seven) days, after service on the Tenants, pursuant to section 55 of the Act. 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.

As the Landlords were successful in obtaining an Order of Possession based on the 10 Day Notice, I find that it is unnecessary to make a finding on the validity of the One Month Notice served.

Regarding the unpaid rent, I find that the Landlords were provided with a monetary order in the previous hearing in the amount of rent owed. I find it is not necessary to create a new monetary order. The Landlords are at liberty to enforce the monetary order through small claims Court.

Conclusion

The Tenants breached the tenancy agreement by not paying rent when due.

The Landlords are granted an order of possession, which will be effective seven (7) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: July 15, 2024

Residential Tenancy Branch