



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Landlord P.G. and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord P.G. (the landlord) indicated that he was representing both landlords and Tenant K.B. (the tenant) indicated that they would be the primary speaker for the tenants during the hearing.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the Application and evidence.

The tenant acknowledged receipt of the landlords' evidence. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlords' evidence.

The landlord testified that they served the 10 Day Notice to the tenant by posting it to the door of the rental unit on October 11, 2018. The tenant confirmed receipt of the 10 Day Notice on the same day. In accordance with section 88 of the *Act*, I find that the tenants were duly served with 10 Day Notice on October 11, 2018.

Issues to be Decided?

Should the landlords' 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the tenants entitled to any of the other remedies they are seeking under the *Act*?

Background and Evidence

A copy of the signed 10 Day Notice dated October 11, 2018, identifying \$1,200.00 in unpaid rent and \$523.28 with an effective date of November 11, 2018, was provided in evidence by the landlord.

A copy of an electronic funds transfer in the amount of \$207.50 from the tenant to the landlord on September 14, 2018, was provided in evidence by the tenant.

The tenant testified that they had an agreement with the landlord to not pay rent for October 2018 due to the landlord needing the house for another purpose and asking the tenants to move out. The tenant submitted that, after they received the 10 day Notice, they attempted to pay the landlord rent for October 2018 but that the landlord refused it. The landlord confirmed that no rent has been paid for November 2018.

Tenant A.B. provided testimony that they had witnessed the landlord refusing rent money from the tenant. Tenant A.B. testified that the tenants have moved out of the rental unit due to the fact that it is currently unliveable due to work being done by the landlord.

The landlord confirmed that the tenants have moved out of the rental unit but that they still have belongings at the rental unit which makes him question whether he has possession of the rental unit. The landlord submitted that they did not refuse rent at any time. The landlord referred to the electronic funds transfer on September 14, 2018, and questioned why the tenant did not attempt to electronically transfer the rent when they had sent money that way before. The landlord stated that it is up to the tenants to prove they attempted to pay the monthly rent and that there is no evidence that the tenants attempted to pay the

rent either electronically or in any other way. The landlord requested an Order of Possession.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenants on October 11, 2018, I find the tenant had until October 16, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the tenant submitted their Application on October 15, 2018, within the five day time limit permitted under section 46 (4) the Act; however, I find that the tenants did not provide any evidence that they paid the monthly rent within the five days allowed by the Act or were legally entitled to withhold any rent.

Although the tenant states that they attempted to pay the rent for October 2018, I find that there is no documentary evidence to confirm that the landlord refused any rent. I find that the tenant could have sent the funds electronically as they had done a couple of weeks previously, and if the landlord had refused this transfer the tenant would have submitted that evidence to prove the attempted payment. I find that the tenant did not provide any testimony that they attempted to pay the landlord with an electronic funds transfer. I accept Tenant S.B.'s testimony that the tenants have moved out of the rental unit.

For the above reasons, the tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice

complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

As this tenancy has ended based on unpaid rent, I find that the tenants' Application to cancel the One Month Notice is no longer applicable and it is dismissed, without leave to reapply.

As this tenancy has ended I find that tenants' Application to have the landlord comply with the *Act*, Regulations or tenancy agreement is no longer applicable and it is dismissed, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee, without leave to reapply.

Conclusion

I dismiss the tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed 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: November 22, 2018

Residential Tenancy Branch