



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDCT

Introduction

The tenants submitted an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 11, 2018 (“10 Day Notice”), and for a monetary claim of \$6,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

The tenants and two agents for the landlord (“agents”) attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided; however, I have only referred to the relevant evidence below.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated two matters of dispute on the application, the most urgent of which is

the application to set aside the 10 Day Notice and was the reason the tenants received an expedited hearing. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day at this proceeding. The tenants' monetary claim is dismissed with leave to reapply.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

A month to month verbal tenancy was formed between the parties starting January 1, 2018. Monthly rent of \$900.00 is due on the first day of each month.

The tenant JT ("tenant") testified that he received the 10 Day Notice dated October 11, 2018 on October 11, 2018. The tenants filed their application to dispute the 10 Day Notice on October 15, 2018 which is within the 5 day timeline provided under section 46 of the *Act*.

The tenant and agents confirmed that on October 11, 2018 when the tenants were served with the 10 Day Notice, the tenant did pay \$900.00 in rent leaving rental arrears of \$2,850.00 owing. The 10 Day Notice indicates that the tenants owed \$3,750.00 in rent arrears.

Agent SA testified that the tenant still owes the landlord \$150.00 for the unpaid portion of May 2018 rent, and \$900.00 in unpaid rent for the months of June, July, August and September of 2018.

The tenant stated that he attempted to pay rent but that it was not accepted by the landlords and that he has since spent the rent money. The tenant confirmed that he did not have the \$2,850.00 in rent owing as of the time of the hearing.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenants confirmed under oath that while they attempted to pay rent it was not originally accepted and that the tenants have since spent the rent money and no longer have it available.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. I find that the tenant by their own actions of spending the rent money before being able to pay the landlords either through an agent or at the very least at the time of this hearing, results in the tenants breaching section 26 of the *Act*. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due. Therefore, I find the tenants have failed to meet the burden of proof and I dismiss the tenants' application in full without leave to reapply. The monetary claim portion remains dismissed with leave to reapply as noted above.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy],**
and
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As I have dismissed the tenants' application to cancel the 10 Day Notice and I find the 10 Day Notice complies with section 52 of the *Act*, **I grant** the landlord an order of possession effective two (2) days after it is served on the tenants. I find the tenancy ended on October 21, 2018 which is the corrected effective vacancy date of the 10 Day Notice. Incorrect effective vacancy dates automatically correct under section 53 of the *Act*.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I find the tenancy ended March 9, 2018.

I find the tenancy ended on October 21, 2018.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2018

Residential Tenancy Branch