



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, ERP, RP, LAT, AS, OLC**

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the Notices to End Tenancy be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in October 2021. The monthly rent is \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and is still held by the landlord. The tenant failed to pay rent as required under the tenancy agreement on January 1, 2022 and the landlord issued a 10 Day Notice dated January 3, 2022. The tenant failed to pay the full amount of the arrear.

The parties agree that any partial payments made by the tenant has been clearly indicated to be for use and occupancy only and did not reinstate the tenancy. The tenant calculates that there is a total arrear of \$4,500.00 as at the date of the hearing.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on January 3, 2022, and filed a notice of dispute application on January 3, 2022 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant confirmed that they have not paid any rent for January, February and March, 2022 for this tenancy.

I accept the evidence of both parties that any partial payments were accepted for use and occupancy only and did not reinstate the tenancy.

I find the 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, indicates the rental unit address and the reason for the tenancy to end.

Accordingly, I dismiss the tenants' application to cancel the 10 Day Notice and issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service on the tenants.

As this tenancy is ending, I find no need to make a finding on the other relief sought by the tenants which pertain to an ongoing tenancy.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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: March 29, 2022

Residential Tenancy Branch