



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlord.
2. Payment of \$35,000.00 of unpaid rent.
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 14 April 2023. The tenants did not appear.

Preliminary Matter

I proceeded with this hearing in the absence of the tenants. This is why I did so.

The landlords told me that they served the notice of this hearing on the tenants on 16 March by personally giving a copy of it to two of the tenants, and by posting a copy of it to the front door of the rental unit. They supported this testimony with a photograph that they told me depicted one of the tenants holding a copy of the hearing notice while standing at the front door of the unit.

Rule 7.3 of the RTBs Rules of Procedure reads:

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.

Relying upon this rule, and satisfied by the evidence provided by the landlords that the tenants had been properly served with notice of this hearing, I decided to conduct the hearing in the absence of the tenants.

Issues to be Decided

Is the tenancy at an end?

Do the tenants owe the landlords unpaid rent?

Background and Evidence

The landlords told me that the tenancy agreement with the tenants is a verbal agreement. They said that the tenants moved in 1 April 2020, and agreed to pay the landlords \$3,500.00 each month for rent, and a further \$500.00 each month for utilities. The parties agreed that rent would be due on the first day of each month. And the landlords did not require any deposits from the tenants.

According to the landlords, the tenants regularly paid rent until September 2021. From that point on, the tenants paid either no rent, or only partial rent. The landlords told me that the only rent payments the tenants made since September 2021 were as follows:

- 4 Nov 21 = \$10,000
- 8 Nov 21 = \$10,000
- 30 Jun 22 = \$600
- 22 Jul 22 = \$500
- 25 Jul 22 = \$500
- 20 Oct 22 = \$300
- 28 Oct 22 = \$1,000
- 7 Nov 22 = \$700
- 9 Nov 22 = \$300
- 8 Dec 22 = \$500
- 9 Dec 22 = \$1,200
- 19 Jan 23 = \$1,500

By my calculation, this totals \$27,100.00.

The landlords also told me that, as of 30 January, the tenants have not paid utilities for 16 months. The landlords said that they sent the tenants a demand letter for unpaid utilities on 7 January 2023. The landlords proffered a copy of this demand letter, which quotes \$8,000.00 in unpaid utilities.

Because of this failure to pay rent and utilities, the landlords drew up a 10-day Notice to End Tenancy for Unpaid Rent and Utilities on 30 January [the 'Notice'], and produced a copy of this Notice at the hearing. In drawing this Notice, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 9 February 2023; and
5. stated the basis for the Notice as the tenants' failure to pay rent and utilities.

The landlords told me that they served this Notice by posting it on the front door of the unit on 30 January. They supported this testimony by with a photo of a notice taped to a door.

There was no evidence that the tenants ever applied to the RTB for dispute resolution after receiving this Notice.

Analysis

Is the tenancy at an end?

Based on the evidence before me, I find that the Notice is an effective notice, and that the landlords served it on the tenants on 30 January. There is no evidence that the tenants applied for dispute resolution after receiving this Notice. According, therefore, to section 47 (5) of the *Residential Tenancy Act* [the 'Act'], the tenants are conclusively presumed to have accepted that the tenancy ended on 9 February 2023.

Do the tenants owe the landlords unpaid rent?

Section 26 (1) of the Act places a positive obligation upon the tenants to pay rent. There is no evidence that the tenants have fulfilled this obligation.

Based on uncontroverted evidence offered by the landlords, the rent owing from September 2021 to April 2023 (20 months) is \$70,000.00. But the tenants, I am told, paid some of this amount during this period, totalling \$27,100.00. The remaining balance, then, is \$42,900.00.

What about the utilities owing? Section 46 (6) of the Act only permits a landlord to issue a notice to end tenancy for unpaid utilities if:

1. the landlord gives the tenant a written demand to pay the utility charges; and
2. more than 30 days after giving this demand, the utilities remain unpaid.

In this case, the landlords gave the tenants such a demand on 7 January. Then, on 30 January, they issued the Notice. This was only 23 days after the demand.

According to the Act, the landlords could not have issued such a notice until 7 February. The landlords did not give any reasons to me as to why they issued this Notice before the deadline.

Conclusion

Because the landlords issued the Notice too early, I will not order that the tenants pay \$8,000.00 in unpaid utilities. This does not, however, prevent the landlords from applying again to the RTB for such an order once they have complied with section 46 (6) of the Act.

I grant an Order of Possession to the landlords, *per* section 55 (2) (b) of the Act. This order is effective two days after the landlords serve it upon the tenants.

I also order that the tenants pay to the landlords \$42,900.00 for unpaid rent *per* section 55 (1.1) of the Act.

If the tenants do not comply with my orders, then the landlords may file these orders in the Supreme Court of British Columbia. Then the landlords can enforce my orders as orders 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: 25 April 2023