

## **DECISION**

**Dispute Codes:** CNC and FF

### **Introduction**

This application was brought by the tenants seeking to have set aside a one-month Notice to End Tenancy for cause served on September 4, 2009. The tenants also sought to recover the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenants are entitled to recover their fee for this proceeding.

### **Background and Evidence**

This tenancy began on April 15, 2009. Rent is \$1,000 per month due on the last day of the month and the landlords hold a security deposit of \$500 paid on April 7, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served as a result of two primary breaches..

In the first, the landlord stated that the tenants have been repeatedly late in paying rent and gave evidence that rent for the months in question had not been paid until June 5, 2009, August 12, 2009 and September 4, 2009.

The tenant stated that she had initially provided the landlord with a series of post dated cheques dated on the Wednesday before the end of the month to coincide with her bank deposits. She said that the date of her deposit had changed and, after the first late payment was NSF for June rent, she asked the landlord to wait until the first of the month.

The landlords agreed to wait until the last day of the month as per the rental agreement. Subsequently, the landlord deposited the August rent on July 31, 2009, it was returned NSF and the August rent was paid on August 12, 2009.

The landlords stated that they deposited the September rent cheque on September 1, 2009, it was NSF, and the September rent was paid on September 4, 2009.

The landlords stated that in each instance, the NSF payments were not remedied until they contacted the tenants.

On the second cause giving rise to the Notice to End Tenancy, the landlords gave evidence that while moving in on April 15, 2009, the tenants' moving truck had crushed a section of the eaves troughs on the front of the house. The landlord did not learn of the damage until he visited the property in May.

The landlords stated that eaves troughs were continuous and green. As they were unable to obtain green replacements, they had the damaged section replaced with white, and did the same with the garage to make the building faces match. The landlords stated that the compromise solution was intended to minimize the cost for the tenants and that it compromised the aesthetics of the buildings.

The landlords stated that he had asked the tenants to repair the damage, had waited one month to give them an opportunity to so, and then gave the tenants a repayment plan of \$25 per month starting in August. While the tenants had initially agreed, they had made no payments to the time of the hearing. The landlord said that, in fact, the tenants had subsequently refused to pay for the damage which cost \$294 to repair.

The tenant stated that she not received a copy of the invoice and that she had advice from the residential tenancy branch that she could authorize the landlords to retain the cost of the repair from the security deposit. In fact, while the security deposit may be surrendered against damages at the end of the tenancy, it cannot be applied to damage or unpaid rent while the tenancy is underway.

## **Analysis**

Residential Policy Guidelines instruct that a finding of repeated late payment of rent requires at least three instances of late rent within one year, a number that would allow an inadvertent late payment such as claimed by the tenants. However, I believe in setting the limit at three, the guide expresses the expectation that the late payments will be corrected. In this instance, while I understand that the tenants may have experienced some confusion over deposit dates, the fact remains that the rent was paid late on three occasions within six months

In addition, section 32(3) of the Act states that, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Therefore, I find that the Notice to End Tenancy of September 4, 2009 is lawful and valid and I must decline to set it aside.

The landlords asked that if such was my finding, that they be issued with an Order of Possession under section 55(1) of the *Act* which compels the Order if a tenant's application to set a notice aside fails.

Accordingly, I find that the landlords are entitled to the Order of Possession to take effect at 1 p.m. on November 15, 2009.

As the application has not succeeded, the tenants remain responsible for their own filing fee.

## **Conclusion**

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, for service on the tenants with an effective end of tenancy date of November 15, 2009.