

## **DECISION**

**Dispute Codes:** OPC, CNC and FF

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of October 8, 2009, amended November 12, 2009, the landlord sought an Order of Possession pursuant to a one month Notice to End Tenancy for cause which was served on October 22, 2009. The landlord had originally made application on a 10-day Notice to End served September 16, 2009 but that notice was extinguished by payment of the rent within five days.

By application of October 30, 2009, the tenants sought to have the respective notices set aside.

Both parties sought to recover their filing fee from the other.

### **Issues to be Decided**

This matter requires a decision on whether the Notice to End Tenancy of October 22, 2009 should be upheld or set aside, and whether the landlord is entitled to an Order of Possession.

## **Background and Evidence**

This tenancy began August 1, 2008. Rent is \$1,250 per month and per month and the landlord holds a security deposit of \$625 and a pet damage deposit of \$312.50, both paid on August 31, 2008.

During the hearing, the landlord gave evidence that the notice to end tenancy for repeated late payment of rent was issued after the tenant had been advised on numerous occasions that rent was to be paid on time.

The tenants stated that the previous property manager had told them it was acceptable to pay the rent up to five days after the 1<sup>st</sup> of the month which was the due date. The current property manager stated that if such tolerance had been exercised in the past, she had consistently indicated to the tenants when paying late that rent must be paid on time.

The tenants also stated that they had not received a copy of the landlord's amended application, but the landlord was insistent that she had served it.

The landlord stated that had no notice of the tenants' application to set the notices aside.

The landlord made reference to a copy of the tenants' ledger she had submitted in to evidence showing that rent had been paid late and/or in fragments on January, February, March, April, May June, August and September of 2009. In most instances final payment was made beyond the five days the tenants claimed to have been allowed.

## **Analysis**

Section 47(1)(b) of the *Act* provides that a landlord may end a tenancy by serving notice if a tenant is repeatedly late paying rent.. Residential Tenancy Policy Guidelines set three late payments within one year as a threshold to constitute repeated late payment under the *Act*.

In this instance I find that the tenants have made at least six late rent payments in the in the current calendar year. Therefore, the landlord requested and I find she is entitled to an Order of Possession effective on November 30, 2009. I further find that the landlord is entitled recover the filing fee for this proceeding from the tenants.

The tenants'[ application to set the notice aside is therefore rendered moot and it is dismissed without leave to reapply.

## **Conclusion**

Thus, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on November 30, 2009. In addition, I hereby authorize and order that the landlord may retain \$50 from the security deposit in recovery of the filing fee for this proceeding.