

DECISION

Dispute Codes: OPR, MNDC, ERP, RR and FF

Introduction

This application was brought by the tenant seeking to have set aside a Notice to End Tenancy for unpaid rent served on January 7, 2010. The tenant also seeks an order for emergency repairs, a Monetary Order for damage or loss under the legislation or rental agreement and an order for rent reduction.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld, and whether an order for emergency repairs is warranted and whether the tenant is entitled to monetary relief for damage or losses.

Background and Evidence

This tenancy began on November 1, 2009. Rent is \$1,900 per month and the landlord holds a security deposit of \$950.

During the hearing, the landlord gave uncontested evidence that, except for a payment of \$700 in December and a \$200 rent reduction for cleaning in November, the tenant had paid no rent since the beginning of the tenancy.

The tenant submitted photographic and email evidence in support of a claim for a rent reduction based on the poor condition of the rental unit. While I initially considered making findings on those submissions, on reflection, I find that such claims would more appropriately be addressed by way of a cross application by the tenant if and when the landlord makes application for a Monetary Order for the unpaid rent.

The tenant had also made application for emergency repairs to the rental unit.

Analysis

Section 46 of the *Act* provides that a tenant who is served with a Notice to End Tenancy for unpaid rent may extinguish the notice by paying the rent within five days for receipt of the Notice, or the tenant may make application to have the notice set aside.

In this matter, I find that the tenant did not pay the rent overdue at the time of the notice, and in the interim, has failed to pay the rent for February, 2010 and provided no evidence that would challenge the notice. Therefore, I find that the Notice to End Tenancy is lawful and valid and I cannot set it aside.

On hearing that determination, the landlord requested and I find she is entitled to an Order of Possession under section 55(1) of the *Act* effective two days from service of it on the tenant.

As the tenancy is ending, I find that the request for an order for emergency repairs is moot and it is therefore dismissed.

As noted, while I can issued the landlord with an Order of Possession on her request under section 55(1) of the *Act* when the notice is upheld on the tenant's application, the landlord must file her own application for a Monetary Order for the unpaid rent and any damages as may be ascertained at the conclusion of the tenancy.

I find that the tenant's request for rent abatement or reduction would more appropriately be dealt with in response to, or by way of cross application on, the landlord's application for a Monetary Order.

Conclusion

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 two days from service of it on the tenant.

February 25, 2010