

DECISION

Dispute Codes CNR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by conference call to deal with an application by the tenant to cancel a notice to end tenancy for unpaid rent, and to deal with the landlord's application for an Order of Possession for cause, a monetary order for unpaid rent, an order to permit the landlord to retain all or part of a security deposit and to recover the filing fee from the tenant for the cost of this application.

Both parties attended the hearing and gave affirmed evidence.

Issues(s) to be Decided

Is the tenant's application to cancel a notice to end tenancy justified?

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy began on December 1, 2009 as a fixed term tenancy that was to expire on November 30, 2010. Rent in the amount of \$840.00 is payable on the 1st day of each month. On November 18, 2009, the tenant paid a security deposit in the amount of \$420.00.

The rental unit is the lower portion of a house that has a vacant suite upstairs, and a common laundry room.

The current agent for the landlord testified that he received the listing for the sale of this property on January 5, 2010. He also took over as property manager on that date, and was to get a tenant for the upstairs unit. He put a sign on the laundry room door to notify tenants how to get ahold of him, but noticed that the door to that room was locked. He finally met the tenant on January 15, 2010 and had a conversation with her

about the locked door and a sign posted on it with "911" written on it. Then on January 22, 2010 he put an advertisement in the newspaper to rent the upstairs unit. He testified that he told agents that when they showed the house, they should show the upstairs only and not give 24 hours notice to show the downstairs unit except to serious buyers.

The landlord's agent testified that the tenant has not paid rent for the month of March, 2010, and didn't pay in January until the 22nd of the month. On January 31, 2010 she left a long message on his voice mail saying she couldn't pay rent for February until the middle of the month because of a death in the family. On February 2, 2010, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on her door. A copy of that notice was provided as evidence prior to the hearing by the tenant. On February 12, 2010 she offered to pay \$100.00 for February, but he did not want to take instalments at \$100.00 each or some other amount, and told her to call when she had the rent money. Then on February 17 he attended to collect the whole month's rent. He was in a hurry, on his way to the Olympics, but she wanted a receipt. She wrote one out for him to sign, and he did, but in his haste, he did not write "For Use and Occupancy Only" on that receipt.

The landlord's agent also issued a 1 Month Notice to End Tenancy for Cause on February 26, 2010, stating that the tenant must move out by March 30, 2010 for repeated late rent payments. He testified that he served the tenant personally with this notice on February 26, 2010.

The landlord also issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 5, 2010, with no expected move-out date written on it at all. It states that the tenant failed to pay \$840.00 that was due on March 1, 2010.

He further testified that the tenant is in arrears for utilities in the amount of \$366.38, as required under the tenancy agreement, which was provided as evidence. The utility bills were also provided as evidence in advance of the hearing, and the Terasen Gas bill shows an amount of \$86.40, and the tenant's portion is 40% of that, being \$34.56. Two copies of utility bills for electric service, water service and sewer service from the City of

Kelowna were also provided, but one was photocopied sideways and has information missing. That bill is for the amount of \$242.07 which also shows that it's for unit "B." The other bill is for unit "A" in the amount of \$89.75. Both bills show "Block 1" and "Block 2" and the landlord's agent testified that Block 1 is for the vacant upstairs unit, and Block 2 is for this unit. However, both bills appear to be for the same month; they both cover the period December 26, 2009 to January 26, 2010. The landlord's agent was not able to explain that. He also testified that he had assumed she had copies of the bills, but she told him she didn't, so on March 5, 2010 he provided her copies.

The tenant testified that she feels the landlord wants to sell the house, and that is the agent's motive for serving the notices to end tenancy. She testified that the landlord's agent told her that the landlord wanted her to move out, and she feels it has nothing to do with being late with the rent. She further testified that she had had no problems with the tenancy when the previous property manager was there, and that this agent has been harassing her. She testified that he gave her a 24 hour notice to inspect her unit in February, and when he arrived, he went into the unit but did not inspect it at all. She further testified that he arrived one day and walked into her bedroom. The landlord does not dispute that fact, but testified that the outside door was wide open, and so was the door to the bedroom, and that he had given her 24 hours notice on that occasion.

The tenant also testified that she offered to pay the rent for the month of March, 2010, but the landlord's agent refused to take it, and suggested that she take the matter up with an arbitrator. A witness on behalf of the tenant, who also testified at the hearing, submitted a written statement stating that he was present when the landlord's agent attended the unit for a property inspection, and that the landlord's agent refused the March 1 payment. This testimony is disputed by the landlord's agent who stated that she did not offer any rent for the month of March. The tenant feels that this refusal to accept the rent money substantiates her claim that the landlord wants her to move out, and that it has nothing to do with late rent payments. Further, a RPN from Interior Health Authority, who the tenant testified is her nurse, submitted evidence that she spoke with the landlord's agent, and in two sentences in her letter, she states that the

landlord's agent said the landlord wants her to move, and that he was refusing to deliver the utility bills to her.

Analysis

In order to claim unpaid rent or damages, the burden of proof lies on the landlord. The first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities shows that it was issued on the 2nd of February, with an expected move-out date of the same date, being February 2, 2010. Section 53(1) of the *Residential Tenancy Act* states that the dates are corrected to the earliest date that complies with the *Act*, and I find that, including the 3 days required for service by posting it to the door of the residence, the notice ought to state that the expected move-out date would be February 15, 2010. I find that the landlord reinstated the tenancy on February 17, 2010 by not writing "For Use and Occupancy Only" on the receipt issued.

The landlord issued 2 additional notices to end tenancy. Firstly, the 1 Month Notice for Cause was issued for repeated late rent payments. I find that the tenant, certainly at that point, had only been late paying the rent in January and February. The general rule to qualify for late rent as a cause to end the tenancy is 3 times. I find that the 1 month notice for repeated late rent should be quashed. Then the landlord issued the 2nd 10 day notice with no expected move-out date. I further find that the landlord's agent was offered rent for the month of March, but refused to accept it because the landlord wanted the tenant to move out.

The City of Kelowna utility bills are not both for this residence. As for the amount of utilities owing, the landlord did not explain the bills sufficiently. The bills show Water Service and Sewer Service, both of which are shown as included in the rent on the Tenancy Agreement. The Tenancy Agreement also states that electricity is not included in the rent, but that the tenant is responsible for 40% of the utilities. If the landlord's agent is not able to explain why there are 2 bills for the same month, and what portion the tenant is responsible for, I am not able to make any order respecting the payment of those bills by this tenant. The Terasen Gas bill submitted as evidence clearly shows the

amount, date and address, and I allow the bill at 40%, being a total owed by the tenant of \$34.56.

Conclusion

The tenant's application to cancel the Notices to End Tenancy is hereby allowed, and all notices are cancelled.

The landlord's application for an Order of Possession for cause is not sufficiently supported by the evidence and is hereby dismissed.

The landlord's application for a monetary order is allowed at one month's rent, for the month of March, 2010 in the amount of \$840.00. The claim for utilities is hereby allowed \$34.56.

Since the landlord has only been partially successful in his claim, and the tenant has been successful in her claim, I decline to make any order that the tenant reimburse the landlord for the cost of this application.

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 30, 2010.

Dispute Resolution Officer