

DECISION

Dispute Codes CNR, CNC, OPR, MNR, MNSD, LRE, LAT, FF

Introduction

This hearing dealt with cross applications. The tenant made an amended application to cancel a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause; to set conditions on the landlord's right to enter the rental unit and authorization to change the locks. The landlord applied for an Order of Possession for unpaid rent and cause; a Monetary Order for unpaid rent; retention of the security deposit and recover of the filing fee. Both parties appeared at the hearing.

Procedural record

At the commencement of the hearing it was uncertain as to whether witnesses were present. After it was established witnesses were not present, the tenant requested the hearing be adjourned so that he could have the opportunity to have witnesses present. The tenant request for adjournment was denied as he did not provide a reasonable explanation as to why his witnesses were not available at the time of this hearing.

As the dispute related to Notices to End Tenancy, the landlord was asked to provide testimony with respect to the issuance of the Notices first. The tenant constantly interrupted or tried talking over me while I was speaking and the disruptive behaviour inhibited the proceeding to progressing. The tenant was provided three warnings to cease such conduct or else he would be removed from the teleconference call. The tenant failed to comply with these instructions and the tenant was ejected from the teleconference call approximately 10 minutes after the hearing commenced. The tenant called back into the teleconference call but was ejected again and the conference call was locked so that the tenant could not enter the teleconference call again.

I proceeded to take testimony from the landlord and the landlord's witness with respect to the reasons for issuing the Notices to End Tenancy. The tenant's application has been dismissed without leave to reapply.

Issues(s) to be Decided

1. Has the landlord established the tenancy should end for unpaid rent?
2. Has the landlord established the tenancy should end for cause?
3. Has the landlord established an entitlement to unpaid rent?
4. Retention of the security deposit.
5. Award of the filing fee.

Background and Evidence

The landlord testified as follows. The tenant rents a bedroom in the landlord's basement and the tenant shares use of the kitchen, bathroom and living area with two other tenants who occupy two other bedrooms in the basement. The landlord and his family live upstairs and do not share a kitchen and bathroom with the tenants. The tenancy commenced in January 2008. The tenant is required to pay rent of \$450.00 on the 1st day of the month in accordance with the terms of the tenancy agreement. The tenant paid a \$200.00 security deposit. The tenant ordinarily paid rent in cash and the landlord would provide the tenant with receipts. On January 31, 2010 the landlord requested rent from the tenant for the month of February 2010. The tenant stated he would have the rent on February 1, 2010. On February 1, 2010 the landlord attended the basement for a meeting with the tenants and the tenant did not pay the rent. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent upon the tenant indicating rent of \$450.00 was outstanding as of January 31, 2010.

The landlord stated that he realized that he issued the 10 Day Notice on February 1, 2010 prematurely and served another 10 Day Notice to the tenant on February 16, 2010. The February 16, 2010 10 Day Notice indicates that \$450.00 was outstanding as of February 1, 2010. The landlord testified that the tenant did not pay him rent for

February 2010 even after serving the tenant with the 10 Day Notice and that the tenant has not to date paid the rent for February 2010. The tenant's did amend his application to include the February 16, 2010 10 Day Notice.

On February 16, 2010 the landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause. The Notice for cause indicates the tenant has

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and,
- Engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In support of the Notice to End Tenancy for Cause, the landlord provided testimony that:

- the tenant frequently argues and fights with other tenants living in the basement and the landlord has lost three tenants because of the tenant's behaviour;
- the tenant disturbs the other tenants with loud music or TV in the early morning hours;
- the police have attended the property four times in February 2010;
- that the tenant is cooking cocaine in the rental unit;
- the other tenants have complained to the landlord and are unable to use and enjoy the common living areas of the basement because of the tenant; and,
- the landlord has attempted to communicate with the tenant about his disruptive behaviour but the tenant does not listen and only argues with the landlord.

The landlord called another tenant living in the basement as witness. The witness' testimony corroborated the landlord's position except the witness stated he had not seen the tenant do anything illegal in the rental unit. The witness confirmed that the landlord conducts himself honestly and has never witnessed the landlord deny a tenant a receipt where rent has been paid.

As evidence for the hearing, the landlord provided copies of the Notices to End Tenancy issued to the tenant, copies of receipts issued to the tenant for rent payments, a copy of the tenancy agreement, and evidence related to the condition of the rental property. Included in the rent receipts is a receipt indicating rent for March 2010 was paid but the receipt indicates that rent for February 2010 was not received and the issue is “under dispute resolution.” Upon enquiry, the landlord stated that he has not indicated to the tenant that the tenancy would continue upon acceptance of money in March 2010.

Analysis

I am satisfied that the 10 Day Notice issued February 1, 2010 was issued prematurely and it is invalid and unenforceable. I accept that the 10 Day Notice issued February 16, 2010 was to replace the invalid Notice and has been properly completed and sufficiently served upon the tenant. Where a tenant is issued a 10 Day Notice the tenant must either pay the outstanding rent or dispute the Notice. In order to successfully dispute a 10 Day Notice, the tenant must be able to show that the rent was not outstanding or that the tenant did pay the rent owing. The tenant’s application indicates that the tenant pays in cash and the landlord refuses to give the tenant a receipt.

Upon review of the landlord’s evidence, I find the landlord does issue receipts to the tenant when rent is paid. I find the landlord’s explanation that there is no receipt for February 2010 because the tenant did not pay the rent to be reasonable and I did not find any reason to disbelieve the landlord. I also note that the failure to pay rent for February 2010 is also noted on a receipt issued in March 2010. Ultimately the burden to prove rent is paid is upon the tenant as a landlord cannot be expected to prove something was not received. I find the tenant did not provide sufficient evidence to conclude rent was paid for February 2010 and I uphold the 10 Day Notice issued February 16, 2010. I do not find the landlord reinstated the tenancy when monies were collected from the tenant in March 2010.

As I have upheld the 10 Day Notice, I do not find it necessary to further consider the 1 Month Notice to End Tenancy for Cause. I grant the landlord an Order of Possession for unpaid rent effective two days after service upon the tenant. The Order of Possession may be enforced by filing it in The Supreme Court of British Columbia and enforced as an Order of the Court.

I find the landlord has established an entitlement to recover unpaid rent from the tenant in the amount of \$450.00 for the month of February 2010. I also award the filing fee to the landlord. I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the unpaid rent. The landlord has been provided a Monetary Order in the amount of \$297.00 [\$450.00 unpaid rent + \$50.00 filing fee - \$203.00 security deposit and interest]. The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant's application has been dismissed. The landlord is provided an Order of Possession effective two days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order in the amount of \$297.00 to serve upon the tenant.

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 19, 2010.

Dispute Resolution Officer