

DECISION

Dispute Codes

CNC

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Cause issued March 13, 2010.

I reviewed the documentary evidence provided prior to the Hearing. Both parties attended and gave affirmed testimony and the matter proceeded on its merits.

Issues to be Determined:

Should the Notice to End Tenancy for repeated late payment of rent be cancelled?

Background and Evidence

The Landlord testified that the Notice to End Tenancy was posted on the Tenant's door on March 13, 2010.

The Landlord testified that the Tenants have been late paying rent for the months of November, 2009, February, 2010 and March, 2010. The Landlord stated that the Landlords did not agree that the Tenants could pay their rent late. The Landlord asked for an immediate Order of Possession.

The male Tenant testified that they were only late paying rent twice: for February, 2010 rent; and March, 2010 rent. The male Tenant stated that the female Landlord had given them permission to pay November, 2009, rent late.

Analysis

The Landlord provided a copy of the tenancy agreement in evidence. The tenancy agreement provides that rent must be paid in advance on or before the first day of each month.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenants did not have a right under the Act to deduct all or a portion of the rent.

The male Tenant stated that the Landlord agreed that November's rent could be paid late. The male Landlord denied that such permission was given.

The Landlords provided copies of caution letters provided to the Tenants, issued November 3, 2009 and February 5, 2010, in evidence. The Tenants provided a copy of a receipt dated February 3, 2010, in evidence, which indicates "rent received late (second time)" and "Nov/Feb rents paid late".

Based on the testimony and supporting documentary evidence provided by both parties, I am satisfied that the Tenants have been late paying their rent on three occasions, which is the minimum number of times required to justify a Notice to End Tenancy for late payment of rent. I am satisfied that the Landlords did not give permission for the Tenants to pay rent late in November, 2009.

Therefore, the Tenants' application to cancel the Notice to End Tenancy is dismissed.

The male Landlord made a request for an Order of Possession. The effective date of the end of tenancy was April 30, 2010. Therefore, I grant the Landlords an Order of Possession **effective two days after service of the Order on the Tenants.**

Conclusion

The Tenants' application to cancel the One Month Notice to End Tenancy for Cause issued March 13, 2010, is dismissed.

I hereby grant the Landlords an Order of Possession **effective two days after service of the Order on the Tenant**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 7, 2010