

## **DECISION**

Dispute Codes      CNR, MNSD, ERP, RP, SS, FF

### Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent, for return of the security deposit, for emergency repairs, for repairs, for conditions to be set upon the landlord's right to enter the rental unit, and for recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

The tenant testified that she served the landlords with notification of this hearing by leaving the hearing documents under the landlord's car windshield. The landlord acknowledged receiving the documents and was prepared to proceed with this hearing. I also determined the tenant had not served the landlord with copies of the tenant's evidence – being a copy of the 10 Day Notice to End Tenancy and a tenancy agreement. I verified the landlord had copies of the same documents provided to me by the tenant and I accepted those documents as evidence.

### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for Unpaid Rent?
2. Is the tenant entitled to return of the security deposit?
3. Are Orders for repairs and emergency repairs required?
4. Is it necessary to set conditions upon the landlord's right to enter the rental unit?

### Background and Evidence

I was provided evidence as follows from both parties. The tenant moved into the rental unit on April 7, 2010 and paid rent of \$1,000.00. The tenant paid a \$500.00 security

deposit but did not pay the pet deposit required by the landlord. The parties did not execute a written tenancy agreement with respect to the subject rental unit. Both parties had anticipated that the tenant's possession of the subject rental unit would be temporary in nature until renovations were completed in a different unit managed by the landlords. On May 8, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice indicates \$1,000.00 in rent was outstanding as of May 1, 2010 and had an effective date of May 18, 2010. The tenant did not pay the outstanding rent but disputed the Notice within the time limits imposed by the Act.

The tenant acknowledged that she owed rent for May 2010 but explained that she did not pay the rent for May 2010 because the landlord had agreed the tenant could have a different rental unit as of May 1, 2010 and because the landlord did not make certain improvements to the condition of the rental unit. The tenant also alluded to a confrontation with the male landlord on May 3, 2010 and the landlord's failure to return a phone message left for the landlord on April 29, 2010. The tenant later argued that rent was not due on the 1<sup>st</sup> of the month but on the 7<sup>th</sup> of the month since she had paid a full month's rent on April 7, 2010.

I determined that the written tenancy agreement provided as evidence pertains to a different rental unit and not the subject rental unit. The tenant has not provided possession of the other rental unit as it is still under renovation. The landlord explained that when the parties entered into an agreement for the subject rental unit it was understood that the other unit would be made available for the tenant upon completion of the renovations, and not May 1, 2010. Until such time the other unit was available, the tenant would have possession of the subject rental unit and be required to pay rent of \$1,000.00 which is the same rent the tenant would have paid for the other unit.

The landlords requested that the tenant be required to move out immediately and the landlords be provided compensation for unpaid rent and utilities.

## Analysis

For clarity, the application before me and this decision pertains to the rental unit the tenant is currently occupying and not the other unit (basement suite) to which the parties referred during the course of this hearing.

Under section 46 of the Act, where a tenant does not pay rent when due, the landlord may end the tenancy by issuing a 10 Day Notice on the day after the rent is due. Within five days of receiving such a Notice, the tenant may pay the outstanding rent to nullify the Notice or may dispute the Notice. As explained to the tenant during the hearing, in order to succeed in having the Notice cancelled the tenant must be able to show rent was not outstanding when the Notice was issued, that the tenant had the right to withhold rent, or the Notice was otherwise invalid.

In this case, I am satisfied the landlord served the tenant with a 10 Day Notice in the approved form in respect of the rental unit the tenant is currently occupying. In accordance with section 90 of the Act, since the 10 Day Notice posted on May 8, 2010 the Notice is deemed to be received by the tenant three days later on May 11, 2010. The effective date of the Notice is automatically changed to read May 21, 2010 in accordance with section 53 of the Act.

An issue raised by the parties is whether the rent was due on May 1, 2010 or May 7, 2010. The landlord has the burden to prove when rent is due under the terms of the tenancy agreement. In the absence of evidence to the contrary, I find the tenant made a reasonable submission that rent was payable on the 7<sup>th</sup> day of the month. Since the Notice was issued on May 8, 2010 I find the landlord did issue a Notice to End Tenancy on the day after the rent is due. Therefore, I find the Notice is enforceable as the rent was unpaid on the day the landlord issued the Notice.

It is undisputed that the tenant owed rent for May and did not pay the outstanding rent within five days of receiving the Notice. I do not find the tenant established that she had

the right to withhold rent. Therefore, I find no basis to cancel the Notice and the tenant is required to vacate the rental unit by May 21, 2010.

I grant the landlord's request to regain possession of the rental unit by providing the landlords with an Order of Possession pursuant to section 55 of the Act. I provide the landlords with an Order of Possession effective two (2) days after service of the Order upon the tenant. The Order of Possession may be enforce in The Supreme Court of British Columbia.

I do not grant the landlords' request for monetary compensation as the landlords have not made an Application for Dispute Resolution. The landlords retain the right to make an Application for Dispute Resolution against the tenant.

Since the tenancy is ending tomorrow, I do not find it necessary to issue any Orders to the landlord with respect to repairs, emergency repairs or to set conditions upon the landlord's restricted right to enter the rental unit. Rather, the landlords were informed that it is illegal to enter the rental unit in a manner that does not comply with section 29 of the Act, to remove the tenant or her possessions, or change the locks while the tenant is still in possession of the rental unit.

As the tenancy has not yet ended I find the tenant's request for return of the security deposit to be premature and I dismiss that request with leave to reapply.

As the tenant was not successful in this application I do not award the filing fee to the tenant.

### Conclusion

The Notice to End Tenancy for Unpaid Rent has been upheld and the tenancy ends May 21, 2010. The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The tenant's request for repairs and for conditions be set upon the landlord's right to enter the rental unit are dismissed as the tenancy is ending. The tenant's request for return of the security deposit is dismissed with leave.

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 20, 2010.

---

Dispute Resolution Officer