

DECISION

Dispute Codes OPR, MNR, FF
 CNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2010 and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant claimed that he had not received a copy of the Landlord's application. The Landlord said he sent his application and Notice of Hearing to the Tenant's residence by registered mail on March 24, 2010 but that it was returned to him unclaimed. The Tenant denied receiving a notification card advising him about the registered mail. Given that the Landlord can make an oral application for an Order of Possession under s. 55(1) of the Act if the Tenant's application is dismissed, I ordered the Landlord to re-serve his application and evidence package on the Tenant.

As the Tenant could not be certain that he would receive this package by registered mail again, I ordered that the Landlord send his hearing package to the Kelowna Residential Tenancy Branch no later than May 17, 2010 and Ordered the Tenant pick it up at that location. If the Tenant fails to pick up the hearing package, he will be deemed to have been sufficiently served for the purposes of the Act. The Landlord's application for a monetary order for unpaid rent is adjourned to June 21, 2010 at 9:00 a.m. for hearing and new Notices of Reconvened Hearing will be sent to each of the Parties.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started approximately 5 years ago. On June 22, 2008, the Parties entered into a written tenancy agreement for a 3 year fixed term commencing August 1, 2008 and expiring on August 31, 2011 at a rate of \$1,800.00 per month for the entire house. The Tenant was given permission to sub-let the lower suite of the rental property which he did. The Parties agree that rent is due in advance on the 1st day of each month.

The Landlord said the Tenant did not pay rent for March 2010 when it was due and as a result, on March 14, 2010, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the Tenant's door. The Landlord said the Tenant's rent

cheque for March was returned for non-sufficient funds and the Tenant now has arrears of rent for March, April and May 2010.

The Tenant claimed that shortly after the Landlord listed the property for sale in December 2009, he told the Landlord that he would be moving out. The Tenant said the Landlord asked him to stay because he was trying to sell the property as a revenue property. The Tenant said he agreed to stay but then found it to be too intrusive to try to accommodate showings of the rental property and he claimed that people went through his belongings. Consequently, the Tenant said he again told the Landlord that he would be leaving but that the Landlord said if he would stay the Landlord would re-negotiate the rent and let him know how much it would be.

The Tenant said he asked the Landlord to tear up two post-dated cheques (for March and April 2010) and waited for the Landlord to advise him how much the re-negotiated rent would be but the next thing he knew, the Landlord served him with the 10 Day Notice. The Tenant said the Landlord also gave him a letter which stated that he was not to deposit money into the Landlord's bank account because it had been closed and that he was to pay the rent to the Landlord in cash.

The Tenant admitted that he did not pay the rent for March, April and May 2010 and knew that the Landlord had not waived payment of some rent for each of those months. The Tenant also admitted that he made no attempt to contact the Landlord to find out how much rent he was supposed to be paying. The Landlord denied that he spoke to the Tenant about reducing the rent or that the Tenant asked him to destroy post-dated cheques. The Landlord said he had no contact from the Tenant in late-February or early-March 2010 and that when he tried to contact the Tenant by telephone after the Tenant's cheque for March was returned, the Tenant would not return his calls.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution if rent is not owed.

The Tenant claimed that he had a verbal agreement to pay a reduced rate of rent which the Landlord denied. The Tenant has the burden of proof on this point and must show (on a balance of probabilities) that there was an agreement as alleged. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof. Given that the Landlord contradicted the Tenant's evidence and in the absence of any corroborating evidence to resolve the contradiction, I find that the Tenant has not provided sufficient evidence to show that there was an agreement to re-negotiate the rent. I also find that there was no agreement because there was no consensus or even discussion as to what the alleged new rent was supposed to be.

Even if I had found that there was an agreement as the Tenant claimed (which I do not), the Tenant admitted that he knew some rent would be due but took no steps to contact the Landlord to find out what the alleged “re-negotiated” rent would be or to make any payment after he received the 10 Day Notice. Consequently, I find that there is unpaid rent for March 2010 and for that reason, I also find that there are no grounds for the Tenant’s application to cancel the 10 Day Notice to End Tenancy dated March 14 2010 and it is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

As the Tenant has been unsuccessful on his application, his application to recover the filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 14, 2010 and to recover the filing fee for this proceeding is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. The Landlord’s application for a monetary order for unpaid rent and to recover the filing fee are adjourned to June 21, 2010 at 9:00 a.m. for hearing.

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 04, 2010.

Dispute Resolution Officer