

Decision

Dispute Codes: CNC, OPC

Introduction

This hearing dealt with an application by the tenant to cancel the landlords' notice to end tenancy and, in the absence of success in the tenant's application, a request by the landlord(s) for an order of possession. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 1, 2007. The tenant's portion of rent is \$458.00, and is payable in advance on the first day of each month. A security deposit of \$438.00 was collected on or about December 31, 2006.

Arising from a pattern of late payment of rent, the landlord(s) issued a 1 month notice to end tenancy for cause dated March 15, 2010. The notice was served in person on the tenant on March 16, 2010. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

Tenant is repeatedly late paying rent

Thereafter, the tenant filed an application to dispute the notice on March 22, 2010.

Evidence submitted by the landlord(s) includes a letter to the tenant dated September 21, 2009. In this letter, the tenant is informed of specific months when rent has been paid late; these months include November & December 2008, in addition to January, July & September 2009. During the hearing the landlord(s)' agent testified that months

subsequent to September 2009 when the tenant has paid rent late include November 2009 and March 2010.

During the hearing the parties undertook to achieve a partial resolution of the dispute.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Based on the documentary evidence and testimony of the parties I find that the tenant was served with a 1 month notice to end tenancy for cause dated March 15, 2010.

While the tenant filed an application to dispute the notice within the time permitted under the Act, the tenant does not dispute the landlords' position in relation to the specific months when rent has been paid late.

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," and provides in part as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that while the tenant will be required to vacate the unit, an order of possession issued in favour of the landlord(s) will be effective not later than 1:00 p.m., Wednesday, June 30, 2010.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord(s) effective not later than **1:00 p.m., Wednesday, June 30, 2010**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: May 7, 2010

Dispute Resolution Officer