

Decision

Dispute Codes: MT, CNR, FF

Introduction

This hearing dealt with an application by the tenants for more time to make an application to cancel a notice to end tenancy, cancellation of a notice to end tenancy for unpaid rent or utilities, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act

Background and Evidence

There is no written tenancy agreement for the tenancy which began on or about May 1, 2007. Rent for this basement unit in the amount of \$600.00 is payable in advance on the first day of each month. The tenants also agreed to pay 30% of hydro utilities. Early in 2008 the parties entered into a further agreement concerning rental of the garage for an additional \$200.00 per month. On occasion the parties made agreements whereby rent was paid by way of a combination of labour / repairs to the unit, in addition to money. There is no evidence of receipts having been issued by the landlord in exchange for rent.

The landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated April 19, 2010. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence. The notice documents that \$1,000.00 is overdue for rent. The landlord testified that this amount is comprised as follows:

\$600.00: April's rent for the basement unit

\$200.00: April's rent for the garage

\$200.00: balance of rent overdue for January or February

The tenants take the position that payment of rent for March and April in the amount of \$1,600.00 was made on March 31, 2010.

The tenants state that prior to the above payment, on January 14, 2010, payment of \$1,400.00 was made for “Jan Rent and Part of Feb.”

The notice also documents that utilities in the amount of \$2,206.52 was overdue for payment when the notice was issued. In this regard the documentary evidence is inconclusive, and neither party presented a compelling argument in any particular direction.

While the parties are unable to agree about the months for which rent has been paid, there is no dispute that the tenants have not paid any rent or utilities to the landlord, subsequent to the issuance of the notice to end tenancy, and the tenants continue to reside in the unit.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and attempted to reach a settlement. However, these efforts were unsuccessful in leading to a resolution of the dispute.

Analysis

As for the tenants’ application for more time to make an application to cancel a notice to end tenancy, I find that the tenants’ application was made within the statutory time limit permitted. Specifically, the tenants received the landlord’s 10 day notice in person April 19, 2010. The tenants had 5 days to submit an application to dispute the notice. As the fifth day fell on Saturday, April 24, and April 25 was a Sunday, “day 5” is Monday, April 26 (the first working day), which is when the tenants filed their application for dispute resolution.

I make no finding as to the amount of utilities that may or may not have been overdue when the landlord’s notice was issued. However, based on the documentary evidence

and testimony of the parties, I find that \$200.00 in rent remained unpaid for February when, on April 19, 2010, the landlord's notice was issued. While the tenant's bank statement evidence is that a payment of \$201.50 was made on March 8, 2010 for the amount overdue in February, the landlord's bank statement evidence shows no receipt of this payment. On a balance of probabilities I prefer the landlord's evidence in this particular matter.

In sum, while they applied to dispute the notice, the tenants did not pay any outstanding rent or utilities within 5 days of receiving the notice. Accordingly, pursuant to the landlord's oral request, I find that the landlord is entitled to an order of possession.

Conclusion

Pursuant to the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the tenants have not succeeded in their application to cancel the notice to end tenancy, their application to recover the filing fee is hereby dismissed.

DATE: June 15, 2010

Dispute Resolution Officer