

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant is obligated to pay \$800.00 per month in rent which is due on the first day of each month. The parties further agreed that the tenant was \$1,150.00 in arrears on May 1, that she owed a further \$800.00 in rent for the month of May and that the landlord owed the tenant \$294.00 for furnace repairs. The tenant acknowledged having been served with a 10-day notice to end tenancy for unpaid rent on May 1. The tenant testified that since receiving the notice to end tenancy, she has paid \$800.00 to the landlord and given him a post-dated cheque for a further \$800.00.

Analysis

Calculating sum of the \$1,150.00 arrears plus the \$800.00 in rent due for May less the \$294.00 owed by the landlord to the tenant leads me to find that as of May 1 the tenant owed the landlord \$1,656.00. I find that the tenant was obligated to pay this amount within 5 days of having received the notice to end tenancy and having failed to do so, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. While the tenant argued that she intends to pay all of the arrears and that she will do her best to pay rent on time in the future and stated that

the reason she has accumulated rental arrears is because she is the sole wage earner in the household, there is no provision under the Act to excuse a tenant from her obligations under the tenancy agreement based on her ability to pay. The tenant has not paid the entire rental arrears and I therefore find that in accepting partial payments the landlord has not reinstated the tenancy. I find that the landlord has grounds to end the tenancy and I decline to set aside the notice. The tenant's application is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. 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. I note that at the hearing the landlord agreed to permit the tenant an additional 2 months in which to locate other accommodation and I have therefore made the order of possession effective on August 31, 2010.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession.

Dated: June 21, 2010
