

DECISION

Dispute Codes: OPC and FF

Introduction

This application was brought by landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for cause, served on April 21, 2010 pursuant to section 40(1)(a) & (g) of the Act. Causes cited in the notice were repeated late payment of rent and breach of a material term of the agreement. The landlord also seeks to recover the filing fee for this proceeding from the tenants.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy.

Background and Evidence

The tenants took occupancy of the subject manufactured home site in October 2009. As the landlord had sold the unit to the tenant in very poor condition, the tenants were charged no pad rent until December 1, 2009. Pad rent is \$835 per month including hydro.

The tenants are mother and daughter, although only the daughter resides in the manufactured home.

During the hearing, the landlord's representative gave uncontested evidence that the Notice to End Tenancy had been served after the tenants had been late making rent payments on three occasions. In the interim, and after receiving the Notice to Hearing, the tenants were again late in paying the rent in the month of the hearing.

The landlord's documentary evidence included a Notice to End Tenancy for unpaid rent served on March 25, 2010 for the March rent, evidence that part of the rent for April was returned NSF, and a Notice to End Tenancy for unpaid rent dated May 5, 2010.

In all instances, the overdue rent was paid and payment made on May 18, 2010, was acknowledged with a receipt bearing the notation, "For use and occupancy of home site" indicating that by accepting payment, the landlord did not reinstate the tenancy.

As to the breach of agreement, the landlord's representatives stated that the tenant had agreed to complete exterior renovations to the structure within three months. The tenants were of the belief the provision meant three months from the commencement of the work which had not yet begun. There was some discussion between the parties as to the requirements and processes necessary to obtain a building permit.

The tenants acknowledged some challenges with funding the work having had to give greater priority to the interior of the unit to make it habitable.

Analysis

Section 40(1)(a) of the *Act* states that a landlord may issue a Notice to End Tenancy in circumstances in which a tenant is repeatedly late paying rent. Residential Policy Guideline 38 establishes three late payments as the minimum number required to establish repeated late payment.

Section 40(5) of the *Act* states that, if a tenant who receives notice under this section, does not make application to contest the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the date set by the notice and must vacate by that date.

In this matter, the Notice set May 31, 2010 as the end date. However, after some discussion, the landlord's representatives agreed to accept an Order of Possession effective September 30, 2010 on the tenants' promise that:

1. Rent payments would be paid on time;
2. The matter of exterior renovations would be addressed in a timely fashion;
3. The rental unit would be listed for sale;
4. The tenants endeavor to respond to landlord's efforts at communication more readily.

The landlords representatives stated that, if the tenants kept to those agreements, they would consider extending the time for enforcement of the Order of Possession if need be.

Having found that the tenancy is ending on the issue of the repeated late payment of rent, I do not find it necessary to fully review the evidence pertaining to the breach of a material term of the agreement.

As the landlord's application has succeeded, I find that the landlord is entitled to recover the \$50 filing fee for this proceeding.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, effective September 30, 2010 and a Monetary Order for \$50, both for service on the tenants.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

June 21, 2010