

Decision

Dispute Codes: CNR, ERP, RP, PSF, OPT

Introduction

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy; an order instructing the landlord to make emergency repairs for health or safety reasons; an order instructing the landlord to make repairs to the unit, site or property; an order instructing the landlord to provide services or facilities required by law; and an order of possession of the rental unit or site in favour of the tenant.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from April 1, 2010 to March 31, 2011. Rent (\$875.00) and storage (\$25.00) in the total amount of \$900.00 is payable in advance on the first day of each month. April's rent and a security deposit of \$450.00 were collected on or about April 9, 2010. There is no evidence of a move-in condition inspection or report having been completed by the parties.

Arising from rent which was unpaid when due on May 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated May 25, 2010. The notice was served by posting on the tenant's door. The tenant disputed the notice by filing an application for dispute resolution on May 28, 2010. A copy of the notice was submitted into evidence. Subsequently, the tenant paid no rent for the month of May.

During the hearing the tenant stated that she withheld payment of May's rent as she felt the unit was deficient in many ways. However, the landlord stated that in response to

the tenant's various concerns, cleaning and repairs had been undertaken in a timely manner. Despite this, the landlord stated he was prepared to discuss with the tenant the prospect of some limited concession for May's rent as a representation of good will.

The tenant testified that while she has issued post-dated rent cheques for the months of June and July 2010, funds presently in her bank account are sufficient only to cover one of these cheques. The landlord testified that he has not attempted to cash either of these post-dated cheques, pending the outcome of this hearing.

Ultimately, on the basis of the tenant's unauthorized withholding of any payment of rent for May, the landlord requested an order of possession to be effective not later than July 31, 2010. Again, however, the landlord indicated he was receptive to attempting to resolve the dispute around unpaid rent with the tenant outside of the hearing.

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/

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the documentary evidence and testimony of the parties, I find that after the tenant withheld payment of rent for May, the landlord served her with a 10 day notice to end tenancy dated May 25, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the notice, or thereafter, but did apply to dispute the notice.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

It appears the parties do not disagree that certain cleaning and repairs were required in the unit, and that some of this work was undertaken by the landlord in advance of the tenancy agreement coming into effect. As to further work the tenant considered was required after she took possession of the unit, I am persuaded that the landlord responded in a timely manner after being notified by the tenant of her concerns.

In summary, I find the landlord has established entitlement to an order of possession.

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Saturday, July 31, 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: July 16, 2010

Dispute Resolution Officer