

DECISION

Dispute Codes: CNR, MNDC and FF

Introduction

This application was brought by the tenants seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent served on June 10, 2010. The tenants also sought a Monetary Order for repairs and improvements to the rental unit and recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenants are entitled to a Monetary Order for work performed throughout the tenancy.

Background and Evidence

This tenancy began on April 1, 1993, although the tenants have lived in the rental unit since 1987. Rent for the single family dwelling is \$585 per month and the tenant stated that there was no security deposit.

During the hearing, the landlord's agent gave evidence that the Notice to End tenancy had been served because the tenants had not paid the June rent and had an accumulated rent arrears of \$6,760. The tenant did not contest the amount and gave explanation that he had fallen behind in the rent during periods of unemployment.

The tenant further concurred that he had been kept informed of the size the growing arrears and that he had been asked for payment.

The tenant submitted a list of repairs, maintenance and improvements he had done to the rental unit over the years for which he originally claimed credit of \$5,000 and subsequently amended to \$25,000.

The claims included repainting the interior of the home five times and the exterior two and one-half times, exceptional yard maintenance, changing door locks, unplugging drains, replacing kitchen counter tops, storage of family belongings, new back door steps, repair of basement steps and dryer vent, electrical upgrade to the garage, cleaning of ducts, and cleanup from a downstairs flooding.

The tenant also submitted letters from three other parties attesting to the consistency and quality of his maintenance and improvements.

Analysis

Section 26(1) of the *Act* provides that: "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."

Section 46 of the Act states that, if rent is not paid, a landlord may end the tenancy by issuing a 10-day Notice to End Tenancy on any day after the rent is due. The tenant may nullify the notice by paying the overdue rent within five days of receipt of the Notice. In this instance, I find that the rent remained unpaid to the time of the hearing.

Accordingly, I find that the Notice to End Tenancy is valid and lawful and that cannot be set aside.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* (landlord's right to an Order of Possession if a tenant's application to set aside fails). After some discussion and in consideration of the length of the tenancy and the tenant's promise to pay rent in the interim, the landlord's agent agreed to an Order of Possession effective on September 30, 2010.

As to the tenant's monetary claims, it was noted that the rental agreement that took effect on April 1, 1993 states at clause 1:

The Tenant agrees with the Landlord to PAY RENT;
and to REPAIR;
and to keep up FENCES:
... And the landlord may enter and view state of REPAIR, and
that the Tenant will repair according to notice.

Taken in total and together with rent that is and appears to have been substantially below market value, I find that compensation for repairs now claimed by the tenant were contemplated by the rental agreement as duties agreed to by the tenant.

As to any improvements done by the tenant, in the absence of any written agreement from the landlord with respect to offsetting credit against rent, I must find that such improvements were done by the tenant's own initiative and cannot be claimed.

Therefore, I must dismiss the tenants' monetary claims in their entirety.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on September 30, 2010.

While a landlord may be issued with an Order of Possession on the tenant's application to challenge a Notice to End Tenancy, no such provision exists with respect to a Monetary Order. The landlord must make his own application for such an order and remains at liberty to do so.

July 30, 2010