

Decision

Dispute Codes: CNR

Introduction

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy. Both parties participated in the hearing and gave affirmed testimony.

During the hearing the landlord made an oral request for an order of possession in the event the tenant's application fails.

Issues to be decided

- Whether either party is entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from December 1, 2009 to June 1, 2010. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$750.00 is payable in advance on the first day of each month. A security deposit of \$375.00 was collected at the outset of tenancy.

Arising from rent which remained in arrears over several months, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 1, 2010. The notice was served on the tenant by way of posting on her door on that same date. A copy of the notice was submitted into evidence. The notice shows that unpaid rent totals \$845.00. Subsequently, the tenant filed an application to dispute the notice on September 14, 2010, but made no further payment towards rent.

During the hearing the parties engaged in a limited exchange of views on some of the circumstances surrounding the dispute. The amount of rent that may still be outstanding remains in dispute, and that matter will be addressed when a separate

hearing is scheduled in response to an application filed by the landlord. In the meantime, while the tenant stated that she would vacate the unit by the end of October 2010, the landlord requested that an order of possession be made effective as soon as possible.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated September 1, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the notice and, while she applied to dispute the notice, she did not do so within the 5 day period permitted under the Act. Specifically, as the notice was served by way of posting on her door on September 1, 2010, she is deemed to have received it on September 4, 2010. The fifth and final day available to her to file an application to dispute the notice was September 9, 2010; indeed, the tenant's application was filed 5 days after that on September 14, 2010, and she has not applied for more time to make an application. Accordingly, I find that the landlord is entitled to an order of possession, and the tenant's application to cancel a notice to end tenancy is hereby dismissed.

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 tenant. 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: October 15, 2010

Dispute Resolution Officer