

DECISION

Dispute Codes: CNR

Introduction

By application received November 5, 2010, the tenants seek to have set aside a Notice to End Tenancy for unpaid rent served in person on November 2, 2010.

Issues to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background, Evidence and Analysis

This tenancy began on August 1, 2009. Rent is \$915 per month and the landlord holds a security deposit of \$447.50 paid on instalments on August 4 and 5, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had a rent shortfall of \$457.50. The landlord stated that the shortfall was not cleared until approximately November 25, 2010.

The landlord submitted a statement of the tenants' account and five other notices as evidence of a pattern of late rent.

The tenant concurred that the shortfall had not been paid within five days of the tenants receiving the Notice to End Tenancy.

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* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did make application to dispute the notice but had not paid the rent within five days of receiving the Notice to End Tenancy.

Therefore, I advised that I found the Notice to End Tenancy of November 2, 2010 was lawful and valid and that I could not set it aside.

On hearing that determination, the landlords requested and I find they are entitled to an Order of Possession under section 55(1) of the *Act* which compels the issuance of the Order on request where a Notice to End is upheld. As requested, the Order of Possession takes effect at 1 p.m. on December 31, 2010.

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 December 31, 2010.

November 30, 2010