

DECISION

Dispute Codes: CNR, ERP, RP and PSF

Introduction

By application received November 17, 2010, the tenant seeks to have set aside a Notice to End Tenancy for unpaid rent and orders for emergency repairs, repairs and the provision of services or facilities required by law.

Issues to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether tenant is entitled to the issuance of orders for repairs and the provision of services or facilities.

Background and Evidence

According to the landlord, this tenancy began two month ago, and according to the tenant, it began five months ago. The parties agree that rent is \$600 per month and the landlord holds a security deposit of \$375.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served in person after the tenant had failed to pay rent for November 2010.

The parties concurred that the November rent remained unpaid at the time of the hearing and that the December rent, due on the day of the hearing had not been paid.

By way of explanation, the tenant stated that he had not paid the rent because the rental unit was in need of repairs and he was of the understanding that he could apply rent to emergency repairs. However, the tenant made no claim and provided no evidence that he had had emergency repairs done.

The landlord gave evidence that he had been threatened by the tenant, a matter that had been reported to police.

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* 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 tenant did make application to dispute the notice but has not paid the rent while the tenant had no right under the *Act* to withhold it. Section 33 of the *Act* requires a landlord to reimburse a tenant for bona fide emergency repairs under a number of conditions, but no repairs are claimed or proven to have been complete and the section does not authorize withholding of rent.

Therefore, I found that the Notice to End Tenancy was lawful and valid and found that I could not set it aside. On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act* to take effect two days from service of it on the tenant.

As the end of the tenancy is imminent, the tenants request for orders for emergency repairs, repairs and the provision of services for facilities are dismissed as moot.

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 two days from service of it upon the tenant

December 1, 2010