

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing dealt with an application by the tenant to cancel a 10 day notice to end tenancy for unpaid rent of utilities and money owed or compensation for damage or loss. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started July 2010 with rent of \$400.00, the tenant paid a security deposit of \$200.00. On January 5, 2011 the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified the tenant has not paid the January 2011 rent in the amount of \$400.00. The landlord referred to the prior hearing regarding this tenancy where the 2 Month Notice to End Tenancy for landlord's use of property was not upheld, and as vacancy of the rental unit is in question, the landlord remains in full ownership and control of the property. The landlord reiterated that the property has not yet been sold to the Province of British Columbia and the property remains in her possession, she is the landlord.

The landlord has submitted a utility bill for the month of December 2010 in the amount of \$393.71 to show that there is heat being supplied to the tenants in the building. The landlord has submitted into evidence, a note from the tenant threatening the landlord with legal action and that the tenant will 'refuse to leave' no matter what the decision of the Residential Tenancy Branch may be.

The landlord in this hearing per section 55 of the Act, made a verbal request for an order of Possession to be served upon the tenant.

The tenant testified that the landlord is not legally the landlord therefore the notice to end tenancy is invalid. The tenant stated that he has not been served with documents by the landlord or Province of British Columbia regarding the transfer of the property.

The tenant stated that his rental unit is cold and that is why he had to purchase a space heater. The tenant contends that the landlord's workman broke his tv and he is requesting compensation for the tv. The tenant stated that at the start of his tenancy the landlord verbally promised him he could use a bathtub on the second floor but that there is only a shower on the second floor. The tenant stated that someone comes into his room and steals food from his fridge although he has never seen the landlord or any other person make illegal entry into his rental unit. The tenant is seeking \$5000.00 in compensation.

Law

Residential Tenancy Act **Section 55 Order of possession for the landlord**

(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and*
- (b) the director dismisses the tenant's application or upholds the landlord's notice.*

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;*
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;*
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.*

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) Despite section 61 [setting down dispute for hearing], in the circumstances described in subsection (2) (b), the director may, without holding a hearing,

- (a) grant an order of possession, and*
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to an order of possession.

The tenant's application to have the Notice to End Tenancy for Unpaid Rent set aside is dismissed without leave to reapply.

In regards to the tenant's claim for compensation I do not find that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for compensation and this portion of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application, in its entirety, is dismissed without leave to reapply.

I hereby grant the Landlord an **Order of Possession**, effective **2 days** after service of the Order upon the Tenant. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 24, 2011

Residential Tenancy Branch