

DECISION

Dispute Codes: CNR

Introduction

By application of March 10, 2011, the tenant seeks to have set aside a Notice to End Tenancy for unpaid rent served in person on March 9, 2011.

Issues to be Decided

This application requires decisions on whether the Notice to End Tenancy should be set aside or upheld depending primarily on whether this is a co-tenancy or whether it is constituted of tenants in common, or tenant with occupant.

Background, Evidence and Analysis

This tenancy in a three bedroom house began in 2008. From the outset, the tenant's share of the rent has been \$375 per month while rent for the whole house is \$650 per month.

As a matter of note, this tenancy was the subject of a Hearing on February 8, 2011 in which a Notice to End Tenancy for unpaid rent was set aside as the Dispute Resolution Officer found that the landlord had not proven that the tenant was jointly and severally liable for unpaid rent.

The Dispute Resolution Officer in that decision cited the fact that there was no written rental agreement to clearly establish the nature of the tenancy. At one point, for example, family members of the property manager had shared in the rental unit and had paid rent directly to the tenant.

The tenant stated that he had agreed to accept responsibility for the full rent provided the landlord would join in a written agreement to that effect.

In the present matter, the landlord concurs that the applicant tenant's \$375 rent had been paid at the time the Notice to End Tenancy was served but the balance, \$275 owed by a roommate selected by the tenant had not.

The parties concurred that the balance had been paid on March 15, 2011 when the respondent tenant slipped it under the bookkeeper's door.

The applicant tenant argued that the rent was not due until March 15, 2011 because the tenant he had engaged had moved in on February 15, 2011.

Analysis

Section 26 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, the tenant made application to contest the Notice within five days of receipt of it. However, the unpaid rent, paid on March 15, 2011, was one day late of the five days of the Notice served in person on March 9, 2011.

Therefore, the validity of the Notice turns on whether the tenants are co-tenants or tenants in common, or a lead tenant with occupant(s). If they are tenants in common, then the landlord has served the wrong tenant in the applicant whose share was paid on time. If they are co-tenants, or if the second tenant is an occupant, then the tenant was responsible for paying the full rent on March 1, 2011 and the Notice is valid.

Section 13 of the *Act* requires that all tenancy agreements created after January 1, 2004 must be in writing.

Without a written agreement, the shifting nature of the present tenancy makes it very challenging to ascertain its nature at a given time. By practice throughout the majority

of the tenancy, it appears to have been made up of tenants in common and the applicant was merely obliged to pay his agreed to share of \$375 in rent.

Yet he appears to have taken or to have been given licence to add others of his choosing, and under terms of his choosing. For example, the landlord stated that it was his intention to charge other tenants more than the balance of the rent due in compensation for managing the tenancy.

In addition, the tenant stated in the previous hearing that he was willing to assume responsibility for the full rent and in fact stated that he had seen to the payment of the full \$650 for two months.

Therefore, I find that, on the preponderance of evidence, the tenant has become a lead tenant with occupant or co-tenant and he is responsible for the lateness of the full rent on March 1, 2011.

Therefore, I find that the Notice to End Tenancy is valid and lawful and it is upheld. During the hearing, the landlord stated that if the Notice was upheld, she wished an Order of Possession to take effect on April 30, 2010.

I find that she is so entitled by section 55(1)(a) of the *Act* and issue an Order of Possession to take effect on April 30, 2011.

Conclusion

The landlords' 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 April 30, 2011.

March 15, 2011