

DECISION

Dispute Codes: CNR and O

Introduction

By application of March 4, 2011, the tenant seeks to have set aside a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 3, 2011. The tenant also sought compensation for a perceived breach of contract on the landlord's failure to honour an unwritten agreement that the tenant could have a two month grace period on unpaid rent.

Issues to be Decided

This application requires decisions on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to compensation.

Background, Evidence and Analysis

This tenancy began on October 1, 2009. Rent is \$737 per month and the landlord holds a security deposit of \$357.50.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay the rent due on March 1, 2011 and that it remained unpaid at the time of the hearing.

The tenant concurred that he had not paid the rent within five days of deemed receipt of the Notice, March 6, 2011, taking into account that posted notice is deemed to be received three days later under section 90(c) of the *Act*.

The tenant stated that he had a tacit agreement with the landlord that he had a two-month grace period on paying rent. He submitted a copy of his bank statement which

did not reflect a rent payment for January 2011. He stated that he believed the landlord had reneged as a result of an isolated noise complaint.

The landlord stated that he had never expressed in writing or verbally that the tenant had a two month grace period in which to pay the rent and he gave evidence that January rent had, in fact, been paid by the tenant's father.

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 matter, I found the evidence of the landlord to be more credible and that the landlord had not agreed to a delay in the rent payments.

Therefore, I found that the Notice to End Tenancy was lawful and valid and declined to set it aside. On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when a tenant's application to set it aside fails.

The landlord requested and I find he is entitled to an Order of Possession to take effect at 1 p.m. on March 31, 2011.

Having found that the Notice to End Tenancy was lawful and valid, I find that the tenant's claim for compensation for distress resulting from the Notice must be dismissed.

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 March 31, 2011.

The landlord remains at liberty to make application for unpaid rent and any damage or losses as may be ascertained at the conclusion of the tenancy.

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

March 18, 2011