

DECISION

Dispute Codes OPR, CNC

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for an Order of Possession for unpaid rent pursuant to section 55 of the *Act*. The tenants applied for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female tenant (the tenant) confirmed that she received the landlords' 1 Month Notice sent by registered mail on May 17, 2011. The tenant also confirmed that the landlords' agent handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 3, 2011. Although the copy of the 10 Day Notice sent to the Residential Tenancy Branch by the landlords was unsigned and undated, both parties agreed that the 10 Day Notice served to the tenants was signed and dated. The landlords faxed a copy of the signed and dated 10 Day Notice to the Residential Tenancy Branch following the hearing. The tenant also confirmed that she received a copy of the landlords' dispute resolution hearing package from the landlords' agent. The landlords confirmed that on June 3, 2011 they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on May 31, 2011. I am satisfied that all of the above documents were served to one another by the parties.

Issues(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled? Should this tenancy be ended on the basis of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent? Are the landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

This month-to-month tenancy commenced on September 1, 2010. Monthly rent is set at \$500.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$250.00 security deposit paid on August 15, 2010.

The tenants entered into written evidence a copy of the landlords' 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenants to end this tenancy by June 30, 2011, the landlords cited the following reason for the issuance of the Notice:

Tenant has engaged in illegal activity that has, or is likely to:

- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlords entered into evidence a copy of the 10 Day Notice which identified \$500.00 as owing as of June 3, 2011, when they issued that Notice to the tenants. The tenant said that she paid all of the \$500.00 owing for June 2011 by way of a direct deposit into the landlords' bank account on June 10, 2011. The landlords denied having received the tenants' \$500.00 direct banking deposit for June 2011. During the hearing, the landlords checked a final time for any proof that this amount had been deposited into their bank account by the tenants and testified that no such payment has been received.

Analysis – Tenants' Application to Cancel Landlords' 1 Month Notice to End Tenancy

At the hearing, the male landlord testified that he was unaware of any "illegal activity" that the tenants were involved in that would enable the landlords to be allowed to end this tenancy because the tenants' jeopardized a lawful right or interest of the landlords. Since the landlords were unable to identify anything illegal about the tenants' activities, I allowed the tenants' application to dismiss the landlords' 1 Month Notice. I set aside the landlords' 1 Month Notice.

Analysis – Landlords' Application to End Tenancy for Unpaid Rent

By the female tenant's admission, the tenants failed to pay the June 2011 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by June 14, 2011. As that has not occurred, I find that the landlords are entitled to an Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by one o'clock in the afternoon on June 30, 2011, the landlords may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the landlords' 1 Month Notice to End Tenancy for Cause.

I allow the landlords' application to end this tenancy on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent. The landlords are provided with a formal copy of an Order of Possession to take effect by one o'clock in the afternoon on June 30, 2011. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.