

DECISION

Dispute Codes: CNR, ERP, RP, PSF and FF

Introduction

By application of August 3, 2011, the tenant sought to have set aside a 10-day Notice to End Tenancy for unpaid rent served on July 29, 2011. The tenant also sought orders for repairs, emergency repairs, provision of services or facilities and recovery of the filing fee for this proceeding.

Issues to be Decided

This dispute requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether various orders sought by the tenant are warranted under the circumstances.

Background and Evidence

This tenancy began on July 1, 2010. Rent is \$1,400 per month and the landlord holds a security deposit of \$700 paid on or about July 1, 2010.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served after the tenant had failed to pay rent for June or July of 2011. In the interim, the tenant has not paid rent for August or September.

The parties gave explanation that the rental unit had suffered a water intrusion due to a problem originating outside of the suite in the multi unit building. The tenant stated that he had not paid the rent due to the fact that he had been unable to negotiate compensation with the landlord for the loss of use of a portion of the rental unit.

The agent stated that he believed compensation would be in order but that he had been unable to make a final assessment pending discussions with the strata corporation, insurers and the restoration company working on the remediation.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

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 the application but the contested rent arrears remains unpaid and has, in fact, grown.

Having found that there was rent owed at the time the Notice to End Tenancy was served and having found that rent was not paid within five days of receipt of the notice and remains unpaid, I must find that the Notice to End Tenancy is lawful and valid and I cannot set it aside.

The landlord acknowledged that the applicant was a good tenant who had erred in believing that he could withhold rent. He stated that he was willing to work towards an agreement if the tenant would make payment for at least two of the four months' rent now in arrears. The tenant agreed to do so by two days following the hearing.

As repairs are still underway and as the parties will be attempting to arrive at a settlement, I find it premature to issue the repair or service orders at the moment and dismiss those claims with leave to reapply.

Conclusion

The Notice to End Tenancy is upheld.

The parties have advised that the landlord is willing to continue the tenancy if the tenant will pay two of the four months' rent arrears and the tenant has promised to do so.

The parties expressed their intention to negotiate compensation for the tenant for loss of use of part of the rental unit due to water intrusion originating from outside the rental unit.

September 1, 2011