

DECISION

Dispute Codes: Landlord: OPR and MNR
 Tenants: CNC, CNR and FF

Introduction

Both the landlord and the tenants made application for dispute resolution.

By application dated August 15, 2011, the landlord sought an Order of Possession and a Monetary Order pursuant to a 10-day Notice to End Tenancy for unpaid rent served on August 4, 2011. At the commencement of the hearing, the parties concurred that the rent had been paid within the five days permitted to invalidate the notice and the application is now moot.

By application of August 10, 2011, the tenants had applied to have set aside the notice for unpaid rent and Notices to End Tenancy for cause, one dated August 3, 2011 and the other dated August 4, 2011. The first cites failure to pay a pet damage deposit and the second cites repeated late payment of rent, significant interference with the land and serious jeopardy of the health, safety or lawful right of the landlord.

As a matter of note, the notices for cause erred in setting an end of tenancy date of September 7, 2011 which is automatically corrected to September 30, 2011 under section 53(2) of the *Act* as notice for cause may only end the tenancy on a date that is at the end of the rent due period in the month following service.

As a preliminary matter, the tenants made claim that the landlord's evidence package, served in their mail box on September 8, 2011 was late and did not provide them sufficient time to submit a response.

To the extent that the landlord's evidence dealt with more complex allegations such as improper changes to the electrical system, threats against the property manager, obstructing or interfering with service providers attending the rental unit to make repairs ordered by government officials, etc. I will not rely on the landlord's late submission.

However, I found that the hearing should proceed on the issue of repeated late payment of rent as the tenants had, in fact, submitted documentary evidence to respond to that issue and were clearly not prejudiced by the landlord's late submission on the point.

I would further note that the tenants left the 65-minute hearing a few minutes early with a profane expression of anger on hearing that I could not set the Notice to End Tenancy citing repeated late payment aside.

Issues to be Decided

After the preliminary matter of evidence had been dealt with, this matter required a decision on whether Notice to End Tenancy for cause should be set aside or upheld on the issue of repeated late payment of rent.

Background and Evidence

This tenancy began on or about April 1, 2011 under a 12-month fixed term agreement. Rent is \$1,600 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy. The rental agreement indicates that rent is due on the first day of the month.

The present "landlord" referred to herein is a property manager engaged by the owners of the rental unit to manage the rental property on June 1, 2011. The property owners advised the tenants of the appointment of the property manager by letter of June 1, 2011.

During the hearing, the landlord gave evidence that the tenants had established a pattern of repeated late payment of rent.

Receipts submitted by the tenants themselves clearly show rent for June and July of 2011 was paid late. One receipt shows that \$500 of the June rent was paid on June 3, 2011 and the balance of \$500 was paid on June 15, 2011. The receipt for the July rent shows that it was paid by in cash on July 10, 2011 after the posted dated cheque was returned NSF.

The landlord stated that when he attended the tenants' bank to cash the rent cheque for August on the 2nd following the August 1, 2011 holiday, he was advised that there were

not sufficient funds in the account to cover the cheque. He was further advised to deposit the cheque in his own account.

The tenants have submitted a copy of a bank statement showing that their account was debited on August 2, 2011 in the amount of \$1,605, with the notation, "clearing cheque - \$1,6,00" and adding a transaction charge of \$5.00 and showing the account overdrawn. The tenants state that this constitutes proof that the rent was paid on August 2, 2011. Subsequent transactions are blacked out. The landlord stated that the cheque did not clear at his bank until August 4, 2011.

I note an identical entry on the tenant's account on July 4, 2011 was followed by an entry on July 6, 2011 which imposed an NSF charge of \$40 and the notation that the cheque was returned. While there does not appear to be an item of identical length on the blacked out items on the August statement, the proof of payment is not beyond question.

In addition, I note the September rent had not been paid at the time of the hearing on September 14, 2011. However that unpaid rent follows the Notice to End Tenancy for repeated late payment and cannot be taken as proof of the cause of the notice. The tenants stated that they had withheld the September rent in an effort to have the landlord remedy some deficiencies in the rental unit which are documented in their evidence submissions.

The landlord further submitted that the tenants had been late with rent in May 2011, paid in cash on May 3, 2011 after the tenants' bank advised that the account was NSF to cover the May 1, 2011 rent cheque.. The tenants said they had consent of the landlord to be late that month, although the landlord (property manager) gave evidence that the property owners had advised him that the rent had been late for every month since April 2011 and indicated no consent for late payment. In fact they had spoken to him of the substantial inconvenience and cost of repeatedly having to chase the rent..

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 47(1)(b) of the Act provides that a landlord may service a one-month notice to end tenancy in circumstances in which tenants have been repeatedly late paying rent. Policy guidelines advise that three late payments within a year would reasonably constitute repeated late payment.

I find with certainty that the tenants' rent was paid late in May, June and July of 2011. Therefore, I declined to set aside the Notice to End Tenancy for repeated late payment of rent.

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act* which compels the issuance of such order on the landlord's oral request when a tenant's application to set aside the notice has failed.

The Order of Possession will take effect at 1 p.m. on September 30, 2011 to comply with the requirements of one month's notice as previously noted.

While the tenants' application has cited deficiencies in the rental unit, their application does not request orders for repairs or monetary compensation so I make no such considerations in the present decision.

While the landlord requested a Monetary Order in his application, his application was withdrawn as the requested rent had been paid.

The landlord has not requested recovery of the filing fee and I decline to award the fee to the tenants.

The parties remain at liberty to make application for such damages or losses as may be ascertained at the end of the tenancy.

Conclusion

The landlord's 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 September 30, 2011.

September 15 2011