

DECISION

Dispute Codes OPC MNR FF
 CNC

Introduction

This hearing dealt with cross applications for Dispute Resolution by both the Landlord and the Tenants.

The Landlord filed to obtain an Order of Possession for Cause, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenants.

The Tenants applied to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Landlord to the Tenant was not done in accordance with section 89 of the *Act*, as it was posted to the Tenants' door on June 17, 2009. The Tenant confirmed receipt of the hearing package from the Landlord.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord on June 12, 2009. The Landlord confirmed receipt of the Tenants' hearing package.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 47, 55, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to Cancel the notice for Cause under section 47 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on October 1, 2007 with the owner of the rental unit which is located in a Strata operated building with individually owned units. The current rent is payable on the 1st of each month in the amount of \$650.00.

The Landlord testified that during the previous dispute resolution hearing the Dispute Resolution Officer ruled that the 1 Month Notice to End Tenancy that was issued on March 26, 2006 was not valid as the Landlord failed to mark off the reasons why the notice was issued. The Landlord stated that another 1 Month Notice to End Tenancy was issued to the Tenants on May 22, 2009 with all of the required information completed and a copy was submitted into evidence.

The Landlord argued that in addition to causing disturbances and disrupting the quiet enjoyment of other tenants and the Landlord, the Tenants have failed to pay the rent in full for the months of May and June 2009 where the Owner has only received \$525.00 as payment for each of May and June 2009. The Landlord stated that she issued the Tenants receipts for "use and occupancy only" for payments received by the Owner for rent for May, June and July 2009.

The Landlord testified that the notices to end tenancy were issued because of the continued drunkenness, loud noises, arguing and fights that carrying on at all hours of the day and night in the rental unit. The Landlord argued that since she began managing this unit back in July 2008, that she has had to attend to the rental unit on average two times per month in response to loud noises and arguing which does not include the times when she has not been home to attend to the situation. The Landlord testified that she has spoken to the Tenants between 12 to 15 times about their behavior and how it is affecting the other tenants and the Landlord but that each time the Tenants apologize and promise that the drinking and carrying on will not happen again.

The Landlord stated that the occurrence on March 25, 2009 was the final incident that caused her to issue the notice to end tenancy. The Landlord provided evidence and testified to the occurrence where the Male Tenant ran through the hallway screaming and yelling requesting someone to call 911 as his son was attempting to kill him.

The Landlord testified that there are at least 6 tenants who are repeatedly bothered by the actions of the Tenants and who continue to call the Landlord to request something be done.

The Tenant testified that both she and her husband are disabled, that they cannot afford to move, and that they try not to disturb the neighbors. The Tenant argued that the Landlord did not attempt to contact her on the day the suicide note was found and that she felt the Landlord was lying.

In relation to the unpaid rent, the Tenant argued that she was told by her Social Worker that the unpaid rent was sent to the owners after the Tenant called and informed the Ministry of the error.

The Landlord advised that she has not been in contact with the Owners as they have been away on holidays for approximately 1 month and that because the rent was paid directly to the owner she could not testify whether the balance of the outstanding rent was paid at a later date.

The Landlord is requesting an Order of Possession effective August 15, 2009 and to recover the cost of the filing fee from the Tenants.

Analysis

Section 47 of the Residential Tenancy Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord

The Tenant has testified and provided documentary evidence acknowledging that both she and her husband have an alcohol problem. The Tenant continued her testimony by attacking the veracity of the Landlord by stating that the Landlord's testimony and evidence was lies.

A significant factor in my considerations is the credibility of the testimony. In assessing credibility I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the Landlord over the Tenant.

With respect to the Landlord's claim of unpaid rent for May and June 2009, I find that based on a balance of probabilities the Landlord could not provide testimony that she knew for certain that the balance of May and June rent was still unpaid. Based on the lack of evidence in support of this claim I dismiss the Landlord's claim, without leave to reapply.

Based on the above, I hereby find in favour of the Landlord's application and approve the Landlord's request for an Order of Possession effective August 15, 2009.

As the Landlord was partially successful in her claim I find that she is entitled to recover the cost of the filing fee from the Tenants for this application.

I find that the Tenants have failed to prove their case to have the 1 Month Notice to End Tenancy, issued on May 22, 2009, cancelled and so I hereby dismiss the Tenants' application, without leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **August 15, 2009**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim to recover the cost of the filing fee. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the Tenants and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Landlord's claim for \$250.00 of unpaid rent for May and June 2009, without leave to reapply.

I HEREBY DISMISS the Tenants' application to cancel a notice to end tenancy for cause, without leave to reapply.

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*.

Dated: July 23, 2009.

Dispute Resolution Officer