

DECISION

Dispute Codes: CNC and FF

Introduction

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause, repeated late payment of rent, served on September 4, 2009. The tenant also sought to recover the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to recover their fee for this proceeding.

Background and Evidence

This tenancy began on June 1, 1985. Rent is \$1,051 per month due on the first day of the month and the landlord holds a security deposit of \$288 paid on April 26, 1985.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had been served with five Notices to End Tenancy for unpaid rent in February, March, May, June and September of 2009.

In each instance, the rent had been between four and sixteen days late and the tenant made payment within the five days permitted to nullify the notice.

The landlord provided evidence that the tenant had been given permission to pay late in March as he had lost his job, and although he had obtained a new one, and an error in the detail given by his former employer to Employment Canada had resulted in an interruption of his income.

However, when the rent was again late in May and June, after having given verbal warning, the landlord issued a formal warning that a further late payment of rent would result in a Notice to End Tenancy.

When the rent was again late in September, the landlord issued a 10-day Notice for unpaid rent, and a one-month Notice for repeated late payment of rent. While the September rent was paid on September 4, 2009 and the 10-day notice was nullified, the one-month notice remained in effect.

Analysis

Section 47(1)(b) includes repeated late payment of rent among the reasons for which a landlord may issued a Notice to End Tenancy for cause. Residential Policy Guidelines instruct that a finding of repeated late payment of rent requires at least three instances of late rent within one year.

While the tenant stated that the landlord had established a pattern of tolerance over the 24 years of his tenancy, the landlord stated that tolerance did not extend to the number and frequency of late payment demonstrated by the tenant.

Moreover, the warning letter of June 9, 2009 is clear and unambiguous in stating that further instances would result in an end of the tenancy.

I find that the Notice to End Tenancy for repeated late payment of rent of September 4, 2009 is lawful and valid. I cannot set it aside and the tenant's application is dismissed..

On hearing that determination, the landlord requested an Order of Possession pursuant to section 55(1) of the *Act* which permits a landlord to request and compels the issuance of the order when a tenant's application to set aside a Notice to End is dismissed.

The landlord requested that the order take effect on November 30, 2009.

Conclusion

Thus, the landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, for service on the tenant with an effective end of tenancy date of November 30, 2009.

As the application has not succeeded, the tenant remains responsible for his own filing fee.