

DECISION

Dispute Codes CNC, CNR, FF

Introduction

This hearing dealt with an application by the tenants for an order to set aside notices to end this tenancy. Both parties participated in the conference call hearing.

Issues to be Decided

Is the 10-day notice to end tenancy for unpaid rent effective to end this tenancy?

Background and Evidence

The parties agreed that the tenancy began approximately 4 years ago and that the current rent is \$1,300.00 per month, payable in advance on the first day of each month. The parties further agreed that the tenants did not pay rent on April 1 and that on April 3 the landlord served the tenants with a 10-day notice to end tenancy for unpaid rent and with a one month notice to end tenancy for cause. The tenant W.L. testified that when the landlord came to the rental unit on April 3, W.L. offered to pay her the rent but the landlord refused to accept it. W.L.'s adult son, R.R., testified that he overheard the conversation from the top of the stairs and specifically heard his mother offer the rent to the landlord and heard the landlord refuse. The landlord denied having been offered the rent and provided three unsworn statements from her children and her children's friend in which they state that they were present at the rental unit and that W.L. did not offer to pay the rent.

At the hearing the tenants testified that they could obtain a bank statement to show that they withdrew \$1,300.00 on April 3 as proof that they had the money available to the landlord. I asked the tenants to fax the Residential Tenancy Branch a copy of the bank statement on Friday, April 30 and instructed them to give a copy to their landlord on that date as well. I instructed the landlord to contact the Residential Tenancy Branch to

confirm that she had received the bank statement. I repeated my instructions several times and confirmed that each of the parties was fully aware of what was expected of them. On April 30 the tenants faxed a document which was not a bank statement to the Residential Tenancy Branch. On May 4 the landlord sent the Residential Tenancy Branch a statement advising that she contacted the tenants on April 30 and on May 1 but that they did not provide her with a copy of the document provided to the Residential Tenancy Branch.

Analysis

When a landlord alleges that tenants have not paid rent, the tenants bear the burden of proving that rent has been paid or at least that they attempted to pay rent. Although the tenants provided a document to the Residential Tenancy Branch which they claim supports their argument that rent was paid, they did not provide a copy of that document to the landlord despite clear and repeated instructions to do so. To consider evidence which was not provided to the other party would be a breach of the fundamental rules of natural justice. The tenant's evidence therefore has not been considered. I find that the tenants have not proven that they attempted to pay rent on April 3 or within the 5 days following that date. I find that pursuant to section 46(5) the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I therefore dismiss the tenants' application to have the notice set aside.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I so order. The tenants must be served with the order of possession.

Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I note that the notice to end tenancy listed the wrong address as the rental unit, naming the other half of the duplex in which the landlord's daughter resides. As the tenants applied to dispute the notice despite it having the wrong address, it is clear that the tenants were under no misapprehension as to the purpose of the notice or the fact that

the notice pertained to the rental unit. Section 68(1) of the Act permits me to amend a notice if I am satisfied that the person receiving the notice knew or should have known the information that was omitted from the notice. I find it reasonable to amend the notice in these circumstances.

As I have found that the 10-day notice to end tenancy for unpaid rent is effective to end the tenancy, it is unnecessary to address the grounds stated in the one month notice to end tenancy. The tenants' application to have that notice set aside is dismissed as the issue is moot.

Conclusion

The tenants' claim is dismissed. The landlord is granted an order of possession.

Dated: May 04, 2010
