

## **DECISION**

**Dispute Codes:** CNR, MNDC, OLC ERP and FF

### **Introduction**

By application of March 2, 2011, the tenants seek to have set aside a Notice to End Tenancy for unpaid rent dated February 25, 2011 and setting an end of tenancy date of March 9, 2011. The tenants also seek a Monetary Order for damage or loss under the legislation or rental agreement, an order for that the landlord comply with the legislation, an order for emergency repairs and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires decisions on whether the Notice to End Tenancy should be set aside or upheld.

### **Background, Evidence and Analysis**

This tenancy began on or about January 1, 2011. Rent is \$750 per month and the landlord holds a security deposit of \$375 paid on December 16, 2010.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served on after the tenant had paid only \$200 of the rent due for January and \$375 of the rent due for February 2011.

The tenant stated that he had paid the full rent for both months but that the landlord had not provided him with receipts. However, the parties agreed that tenant had paid no rent for March 2011.

The tenant stated that he had withheld rent due to the need for repairs in the rental unit and claimed \$3,200 in expenses for emergency repairs. However, except for listing a

number of deficiencies in the rental unit including mould, water intrusion, rotting floors, etc., the tenant had provided no invoices, estimates, photographs or third party reports to verify the claims.

## **Analysis**

Section 26 of the *Act* provides that: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Section 33 of the *Act* permits tenants to seek reimbursement from landlords for certain emergency repairs, but only under strict conditions including provision of a detailed accounting of expenses, landlord refusal to reimburse and a reasonable waiting period after the landlord has been given two opportunities to make the repairs, among others.

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 the evidence of the landlord to be more credible with respect to the amount of rent paid and the tenant concurred that no rent had been paid for March 2011.

Therefore, I found that the Notice to End Tenancy is lawful and valid and declined to set it aside. On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when a tenant's application to set it aside fails.

The landlord requested and I find he is entitled to an Order of Possession to take effect two days from service of it on the tenants.

The tenants' monetary claims are dismissed without leave to reapply and the order for landlord compliance is dismissed as moot given the imminent end of the tenancy.

The landlord remains at liberty to make application for unpaid rent and any damage or losses as may be ascertained at the conclusion of the tenancy.

## **Conclusion**

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia to take effective two days from service of it on the tenants.

The tenants' monetary claims are dismissed without leave to reapply and the landlord remains at liberty to make application for unpaid rent, damage and loss.

March 15, 2011