

## **DECISION**

**Dispute Codes:** CNL and CNR

### **Introduction**

This application was brought by the tenant on December 22, 2009 seeking to have set aside a Notice to End Tenancy for landlord use served on November 29, 2009 with an end of tenancy date set at January 31, 2010.

On January 4, 2010, the tenant amended her application to include a request to set aside a Notice to End Tenancy dated December 31, 2009 for rent due January 1, 2010.

Despite having been served with the Notice of Hearing, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, the hearing proceeded in his absence.

### **Issues to be Decided**

This matter requires a decision on whether each of the notices should be upheld or set aside.

### **Background and Evidence**

At the commencement of the hearing, the tenant's advocate advised that she had been in communication with the landlord on behalf of the tenant in an effort to assist the parties in resolving this dispute.

The tenancy began on October 1, 2009 under a 12-month fixed term rental agreement with an end of tenancy date of September 30, 2010. Rent is \$2,500 per month and the landlord holds a security deposit of \$1,200 per month.

The reason for ending the tenancy stated on the Notice to End Tenancy for landlord use was that conditions to complete a sale have been satisfied and the purchaser had requested the landlord in writing to give notice to the tenant.

The Notice to End Tenancy of December 31, 2009 cites unpaid rent of \$85.30 and an additional \$175 as unpaid utilities as per written demand of November 29, 2009.

The tenant's advocate gave evidence, supported by cheque stubs from BC Employment and Assistance, that the rent arrears of \$85.30 had been paid within five days of receipt of the notice and the other \$175 was for contested repairs to the rental unit and not for unpaid utilities.

## **Analysis**

As to the Notice to End Tenancy for landlord use, section 49 of the *Act* which makes provision for such notice states at s.s. (2)(c) that such notice must have an effective date that, " ...if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy."

In this instance, the fixed term agreement is in effect until September 30, 2010 and a notice to end tenancy for landlord use cannot take effect before that date.

Therefore, that notice must be set aside.

As to the notice to end for unpaid rent, in the absence of any evidence to the contrary, I accept the evidence of the tenant's advocate that the rent shortfall was paid within five days of service of the notice and the additional claim did not pertain to utilities.

I find that the notice to end tenancy for unpaid rent was extinguished by timely payment and it is, therefore, set aside. I note also that the notice was dated December 31, 2009 and was premature as the rental agreement sets rent due as on or before the 1<sup>st</sup> day of the month.

## **Conclusion**

- The Notice to End Tenancy for landlord use dated November 26, 2009 and served November 29, 2009 is set aside.
- The Notice to End Tenancy for unpaid rent dated December 31, 2009 is set aside.
- The tenancy continues.

January 14, 2010.