

DECISION

Dispute Codes OPC, FF

Introduction

This was an application by the landlord for an order for possession pursuant to a Notice to End Tenancy for cause. The hearing was conducted by conference call. The landlord's representative and the tenant's representative participated in the hearing

Issues(s) to be Decided

Has the landlord established grounds for ending the tenancy? Is the landlord entitled to an order for possession?

Background and Evidence

The rental property is a two bedroom apartment. The named tenants are mother and son. The tenant's representative at this hearing is husband of the female tenant and father of the male tenant. The tenancy began approximately 14 years ago. In August 2008 the son married and his wife moved into the rental unit. In November, 2009 they had a child. There are now five people living in the apartment.

The Landlord's representative is the resident manager of the rental property. He testified that he served the tenants with a one month Notice to End Tenancy for cause by posting it to the door of the rental unit on February 2, 2010. The tenant's representative denied that the tenants had received the Notice said to have been posted to the door. According to the testimony of the tenants' representative and the written submission by the tenants, they did not receive the Notice to End Tenancy until March 4, 2010 when it was delivered by registered mail with the landlord's application for dispute resolution.

Analysis and Conclusion

I accept the tenants' evidence that they did not receive the Notice to End Tenancy that was posted to the door and I accept that they did receive it together with the landlord's application for dispute resolution and notice of this hearing on March 4, 2010.

The *Residential Tenancy Act* contemplates that a Notice to End Tenancy will be served to a tenant as a stand-alone document. The *Act* does not contemplate that the landlord will serve the Notice to End Tenancy together with an application for dispute resolution. The Notice to End Tenancy is intended to put the tenant on Notice that if he does not make an application for dispute resolution to dispute the Notice within the time provided he may be evicted. When the tenant is confronted with a Notice to End Tenancy as well as the landlord's application for dispute resolution and a Notice of Hearing, all delivered as one package, it may not be clear, even to an astute tenant, that he must file his own application for dispute resolution in response to the Notice.

I find that the Notice to End Tenancy in this case was not properly served and it is therefore void and of no effect. I note as well that the Notice to End Tenancy purported to end the tenancy on March 2, 2010, when it should have specified that the tenancy would end on the last day of the month before rent is due under the tenancy agreement which would have been March 31, 2010.

For the reasons stated I find the Notice to be void and I order that it be cancelled. The tenancy will continue. The landlord is at liberty to serve a new Notice to End Tenancy

Dated: April 19, 2010.
