

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. Both parties participated in the conference call hearing.

At the hearing the landlord stated that he did not know who the applicant was, as a different party was listed as a tenant on the tenancy agreement. The applicant testified that she is a co-tenant with her grandmother, who is listed on the tenancy agreement, and that she has been living at the site for 10 years. The applicant testified that she has paid rent during the tenancy. I found that the applicant is a co-tenant with the individual named on the notice to end tenancy and that as such, she has standing to dispute the notice to end tenancy.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that on or about February 20 the tenant was served with a 10 day notice to end tenancy for failing to pay \$78.14. The landlord testified that on September 26 he taped a notice of rent increase to the door of the rental unit which implemented an increase of \$18.38 effective January 1, 2010. The landlord claimed that the tenant's next door neighbour witnessed him affix the notice of rent increase to the door. The tenant testified that she was away at the time in question and that she did not receive the notice of rent increase in September and did not receive a copy until the landlord gave her a copy the day before the hearing.

Analysis

The Act permits documents to be served by posting the documents on the door of the tenant's residence. Documents served in this manner are deemed to have been received 3 days after having been posted. However, this presumption is rebuttable, meaning that if the party on whose door the documents have been posted can prove that they were not received, the documents are not deemed to have been received. While I accept that the landlord posted the documents on the door of the rental unit, I am not persuaded that the tenant received the documents. The inherent danger of posting documents is that the exterior door of a unit is a public place and the documents may be removed by passersby or through natural elements such as the wind. I find that the tenant did not receive the notice of rent increase until April 6 and therefore the notice of rent increase cannot be effective prior to August 1.

Conclusion

I order that the notice to end tenancy be set aside and of no force or effect. I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring this application. The tenant may deduct this sum from future rent owed to the landlord.

Dated: April 07, 2010

Dispute Resolution Officer