

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party with respect to the application.

The tenant confirmed service of evidence by the landlord's lawyer within the time limits imposed by the Rules of Procedure. Neither party provided a copy of the Notices to End Tenancy issued to the tenant; however, I proceeded to hear from the parties and took verbal testimony with respect to the content of the Notices to End Tenancy.

The tenant wished to introduce evidence with respect to other issues related to the tenancy. Since those issues were not part of this application I refused to hear from the tenant with respect to those issues and informed the tenant of his right to make another Application for Dispute Resolution in order to address any issues not dealt with during today's hearing. The landlord was also informed that the Act prohibits the landlord from seizing personal property of the tenant even if rent is unpaid.

Issues(s) to be Decided

1. Is there a basis to cancel the 10 Day Notice to End Tenancy?
2. Is there a basis to cancel the 1 Month Notice to End Tenancy?

Background and Evidence

The parties provided undisputed testimony that the tenant was served with two Notices to End Tenancy on April 1, 2010. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 1, 2010 indicating the tenant failed to pay rent of \$825.00 on April 1, 2010. The landlord issued a 1 Month Notice to End Tenancy (the 1 Month Notice) on April 1, 2010 with an effective date of May 1, 2010.

The tenant testified that he was moving out of the rental unit on May 31, 2010.

Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day the rent is due. Having heard the landlord issued a 10 Day Notice on April 1, 2010 indicating rent was due on April 1, 2010 I found the landlord issued a 10 Day Notice on the same day the rent was due and not after the day the rent is due. Accordingly, I find the 10 Day Notice issued by the landlord on April 1, 2010 is non-compliant with the Act and is invalid. Therefore, I cancelled the 10 Day Notice issued by the landlord on April 1, 2010. If rent remains unpaid, the landlord is at liberty to issue another 10 Day Notice to End Tenancy.

Section 47 of the Act provides that a landlord may end a tenancy for cause by issuing a 1 Month Notice to End Tenancy. The effective date for a 1 Month Notice must be at least one month after the Notice is received and must be on a date that is the day before the day rent is due. Since I heard rent is due on the 1st day of the month, the effective date for a 1 Month Notice must be the last day of the month. Therefore, the effective date for the 1 Month Notice received April 1, 2010 can be no earlier than May 31, 2010.

Where an effective date on a Notice to End Tenancy is incorrect, the effective date is automatically changed to comply pursuant to section 53 of the Act. Therefore, the effective date of the 1 Month Notice has been automatically changed to read May 31, 2010. Since the tenant stated he will vacate the rental unit by May 31, 2010 I found it

was not necessary to hear from the parties with respect to the merits of the 1 Month Notice and whether the 1 Month Notice should be cancelled or upheld. Since the landlord did not request an Order of Possession and did not provide a copy of the 1 Month Notice I do not provide the landlord with an Order of Possession with this decision.

Conclusion

The 10 Day Notice has been cancelled as it was issued prematurely by the landlord. The 1 Month Notice has an effective date of May 31, 2010 and the tenant stated he will vacate the rental unit by May 31, 2010; therefore, I made no findings with respect to the merits of the 1 Month Notice.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 19, 2010.

Dispute Resolution Officer