

## **DECISION**

Dispute Codes            CNL, CNR, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy and two 10 Day Notices to End Tenancy. The tenant also seeks an Order for the landlord to comply with the Act and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on May 07, May 17, and June 17, 2010 with a copy of the Application and Notice of Hearing and the amended copies of her application. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord, his two agents and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to cancel the Two Month Notice to End Tenancy?
- Is the tenant entitled to cancel two of the 10 Day Notices to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?

### Background and Evidence

Both Parties agree that this tenancy started on September 15, 2001 and has been renewed each year since that time with a new annual fixed term tenancy agreement. The latest agreement states the tenancy will expire on December 31, 2010. The tenant pays a monthly rent of \$1,425.00 each month which is due on the first of each month. The tenant paid a security deposit of \$662.50 on August 07, 2001.

The landlord served the tenant with a Two Month Notice to End Tenancy for the landlords' use of the property on April 30, 2010. This had an effective date of June 30, 2010. The tenant disputes this notice as she states the landlords did not intend to move into the property but did intend to sell it. The tenant claims the landlord told her he intended to sell the property and would give the tenant first refusal to purchase it. She claims he asked her to be open to the realtor to come and view the home. The tenant states it was the next morning when she received the Two Month Notice to End Tenancy which stated that the landlord, his spouse or a close family member would be living in the property. The next weekend the realtor called to make an appointment to view the home. The realtor made an appointment but did not turn up, the tenant called him back and he said he was busy; he called the tenant back around May 06, 2010 to set up another appointment but has not shown up or called back again.

The landlord testifies that he did original intend to sell the property but he then decided to move into it as it was in poor condition. The landlord states that he got married last year and wishes his wife to join him in Canada and for them both to move into the property.

The landlords request an Order of Possession for unpaid rent. The landlord testifies that the tenant paid rent for May, 2010 by cheque however, the cheque was not cleared at the bank due to insufficient funds. The landlord served the tenant with a 10 Day Notice to End Tenancy on May 16, 2010 to vacate on May 31, 2010 due to outstanding rent of \$1,425.00 for May, 2010 and \$8,760.00 outstanding from previous years. The tenant paid \$1,425.00 on May 17, 2010 but did not pay the other outstanding arrears.

The landlord testifies that the tenant did not pay rent for June, 2010 and another 10 Day Notice to End Tenancy was served on the tenant on June 15, 2010 due to outstanding rent of \$1,425.00 and the rental arrears of \$8,660.00. The tenant did not pay the outstanding rent for June or the rental arrears from previous years. The landlord states that each year the tenancy agreement was reviewed and extended a letter was given to the tenant detailing the outstanding rent arrears.

The tenant testifies that she did not pay rent for June, 2010 as she considered this to be her free rent in compensation for the Two Month Notice to End Tenancy. The tenant states the arrears accumulated from a period when she rented the property with her husband and that although they were both on the tenancy agreement the arrears were his to pay. The tenant

agrees that the landlord did mention the arrears each year when the tenancy was renewed but never asked her for a payment until May 2010.

The tenant claims she has sent the landlords multiple e-mails concerning appliance repairs and she thought the landlords would take these costs from the outstanding rent arrears. The tenant seeks an Order for the landlord to comply with the *Act* with regards to her fixed term tenancy and the Two Month Notice issued to end this tenancy for the landlords use of the property.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the tenants claim to cancel the Two Month Notice to End Tenancy; I find this was a fixed term tenancy which was due to expire on December 31, 2010 a landlord is not able to end a fixed term tenancy by serving a tenant with a Two Month Notice unless there is a mutual agreement to end the tenancy. Consequently this section of the tenants' application is upheld and the Two Month Notice is cancelled.

With regard to the tenants application to cancel two 10 Day Notices to End Tenancy for unpaid rent. I find the first Notice served to the tenant on May 16, 2010 that the tenant did make a partial payment to pay the outstanding rent owed for May, 2010 but did not make a payment towards the other rent arrears. Consequently this Notice is upheld.

With regard to the 10 Day Notice to End Tenancy served on June 15, 2010 the tenant argues that she considered June's rent to be compensation for the Two Month Notice she received in April, 2010. The tenant also argues that her ex-husband is responsible for the rent debt from previous years. I direct both Parties to #13 of the Residential Tenancy Policy Guidelines which states a tenant is a person who signed a tenancy agreement to rent residential premises or who had an oral agreement to rent premises. Co-tenants are jointly responsible for meeting the terms of a tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent from all or one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owed to the landlord. Consequently, I find the tenant is responsible for the unpaid rent from previous years to the sum of \$7,235.00 and for rent for June, 2010 of \$1,425.00 as the tenant is being evicted due to unpaid rent and is therefore not entitled to

compensation on the Two Month Notice which has been cancelled. Therefore, the ten day Notices are upheld and the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

With regard to the tenants' application for an Order for the landlord to comply with the *Act*, as mentioned above the Two Month Notice is cancelled and as the tenancy will end no further Orders are required at this time.

As the tenant has been only partially successful with her claim I find she must bear the cost of filing her own application.

### Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice to End Tenancy for landlord's use of the property is cancelled.

The Tenant's application to cancel the 10 Day Notices to End Tenancy is dismissed. The 10 Day Notices to End Tenancy for unpaid rent will remain in force and effect.

The tenants' application for an Order for the landlord to comply with the *Act* is dismissed.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. The tenant must vacate the rental unit by midnight on the last day. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 28, 2010.

---

Dispute Resolution Officer