

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause dated June 28, 2010.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

Even though an application to set aside a Notice to End Tenancy is brought by a tenant, because a failure of the application entitles the landlord to request an Order of Possession, the onus is placed on the landlord to prove that the Notice is lawful and valid.

In the present matter, the landlord gave testimony that she had submitted documentary evidence in support of the Notice to End Tenancy three days prior to the hearing. The evidence in question was not available in print form nor in electronic form on the Residential Tenancy Branch computer system to which submissions are normally added on the day of receipt.

In addition, the tenant's advocate gave evidence that the tenant had not received an evidence package from the landlord.

Analysis

Item 3.5 under the Rules of Procedure requires that parties submitting evidence for consideration must be provide that evidence to the branch and to the other party at lease give days in advance of the hearing. Item 11.5 directs that a Dispute Resolution Officer may adjourn to accommodate the late evidence or refuse to accept it if acceptance would prejudice the other party.

In this matter, the tenant attended the hearing and had arranged to be accompanied by an advocate and a witness. As the Notice to End Tenancy had been served a full two months prior to the hearing, I find that the landlord had ample time to submit the evidence in question.

Without such evidence, I am not prepared to adjudicate a notice that could result in the end of the tenancy. Accordingly, I find that the Notice should be set aside.

Conclusion

The Notice to End Tenancy for cause dated June 28, 2010 is set aside and the tenancy continues.

August 27, 2010