

DECISION

Dispute Codes: CNR

Introduction

This application was brought by the tenant seeking to have set aside a Notice to End Tenancy for unpaid rent received on August 27, 2010.

Issues to be Decided

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

Background and Evidence

The tenancy began on April 1, 2010. Rent is \$700 per month and the landlord holds a security deposit of \$700 although she stated she was aware that security deposits are limited to an amount equal to one -half of the monthly rent as prescribed by section 19 of the *Act*.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was sent by registered mail on August 16, 2010. The tenant stated that he received the Notice on August 27, 2010.

The parties agree that the rent arrears, part of July and all of August rent stated as overdue on the Notice was paid in full on August 31, 2010 and the rent remained paid in full at the time of the hearing.

I must note that it was challenging to extract the salient facts from the parties, as both continually interrupted one another and would speak at length on issues unrelated to the present application when asked direct and pertinent questions. Despite being asked for more measured conduct twice, the parties continued to speak over one another and very likely missed my announcement that the hearing was concluded.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did make application to dispute the notice.

With respect to whether the rent was paid within five days of receipt of the Notice, the landlord states that she mailed the Notice on August 16, 2010 and if that were verified, it would have been deemed to have been received on August 21, 2010 and the August 31, 2010 payment on which both agree would have been outside the five day grace period.

However, on so serious a matter as ending a tenancy, there is an onus on the landlord to prove service and present other evidence in support of initiatives to end the tenancy. The Notice of Hearing and attached documents set out the duties of respondents in a Dispute Resolution Proceeding, including the need to submit evidence.

In this matter, the landlord has submitted no evidence and in particular, the landlord has not submitted a copy of the proof of service of the registered mail to verify the date of service of the Notice to End Tenancy.

Therefore, as the rent was paid and remains up to date, and as I have no evidence that it was paid out of time, I find that the Notice to End Tenancy must be set aside.

Conclusion

The Notice to End Tenancy is set aside and the tenancy continues.

October 15, 2010
