

## **DECISION**

**Dispute Codes:** CNR, DRI and FF

### **Introduction**

By application of March 11, 2011, the tenant seeks to have set aside a Notice to End Tenancy for unpaid rent dated March 10, 2011 setting an end of tenancy date of March 20, 2011. The tenant also seeks to dispute what is identified as a rent increase, although it is identified by the landlord as a suspended employment benefit.

### **Issues to be Decided**

This application requires decisions on whether the Notice to End Tenancy should be set aside or upheld and whether a claimed rent shortfall is salary or rent.

### **Background and Evidence**

The applicant tenant is the resident manager of the rental building in which she resides and has held that position since the beginning of the tenancy on March 1, 2007.

Since taking the position, the tenant/manager has paid rent assessed by the landlord/employer as one-half of the market value of the tenancy. The tenant's rent has been \$425 per month and the landlord sets market value at \$850.

The tenant states that the Notice to End Tenancy should be set aside for the following reasons:

1. She has been on medical leave since February 10, 2011 and the landlord did not serve her with notice she would have to pay market value for the rent during her

medical leave until March 3, 2011 although the letter was dated and the rent due date was March 1, 2011;

2. There is no written agreement which includes a material term that resident managers must pay full rent during periods of illness;
3. The rent reduction is not recorded as a taxable benefit on T-4's issued by the employer;
4. The matter is currently before the Employment Standards Branch for determination with respect to the employment aspect of the matter.

## **Analysis**

Even though this application was brought by the tenant, as it is addressed to a Notice to End Tenancy for unpaid rent, the burden of proof falls to the landlord if the notice is to be upheld. In this matter, the tenant states that there is no written agreement that rent will be varied during an illness and the landlord has provided no documentary evidence of an agreement. Similarly, until the agreement is clarified, I can make no finding on whether the proposed reversion to market value constitutes a rent increase. Having found merit in the application, I find that the tenant is entitled to recover the filing fee for this proceeding and authorize that she may retain \$50 from the next rent due for that purpose.

## **Conclusion**

I find that the landlord has not proven that the Notice to End Tenancy is lawful and valid and it is set aside.

March 31, 2011