



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

These applications were brought by both the landlord and the tenants.

By application of April 19, 2011, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on April 8, 2011. The landlord also submitted a copy of a Notice to End Tenancy for cause dated April 1, 2011.

By application of April 5, 2011, subsequently amended, the tenants seek to have both notices set aside.

Issues to be Decided

These applications require a decision on whether both notices should be upheld or set aside.

Background and Evidence

This tenancy began March 1, 2011. Rent is \$700 per month. The security deposit was supposed to be \$350, but at the time of the hearing, the tenants had paid only \$200.

The notice of April 1, 2011 appears to address the issue of the unpaid portion of the security deposit, a claimed incident of smoking on the premise which the tenant denied, and an incident in which the tenant cursed at the landlord when he attended the rental unit to collect rent which was late.

The Notice of April 8, 2011 pertains to the unpaid portion of the security deposit.

Analysis

I note that the Notice to End Tenancy of April 1, 2011 was served on a form issued in October of 2000. The form is several iterations old and contains references to sections of the *Act* which do not co-relate with the present version. Therefore, I must find that this notice was not served on the prescribed form as required by section 47(3) of the *Act* and as describe at section 52 of the *Act*.

The Notice to End Tenancy of April 8, 2011 was served on the form prescribed for a 10 day Notice to End Tenancy for unpaid rent. While landlords may issue a Notice to End Tenancy for an unpaid security deposit, this provision falls under section 47(1)(a) of the *Act* which requires a one-month Notice to End Tenancy for cause.

For these reasons, I must set both notices aside.

The landlord is at liberty to serve the tenants again using the appropriate notices and to make a new application.

Conclusion

The notices to end tenancy of both April 1, 2011 and April 8, 2011 are set aside and the tenancy continues.

April 29, 2011