

DECISION

Dispute Codes: MT, CNR, CNC, CNL, MNSD, and OPT

Introduction

By application dated received pm May 9, 2011, the tenant seeks to have set aside Notices to End Tenancy for unpaid rent, cause, and landlord use. The tenant also seeks more time to make application and return of the security deposit.

On perusal of the file and with verification of both parties, I note that only the Notice to End Tenancy for unpaid rent was served on the prescribed form as required under section 52 of the *Act*. Therefore, the other two notices, given by letter only, are of no effect and are set aside. The request for more time is moot as the application was brought within five days of receipt of the Notice to End Tenancy for unpaid rent, and the matter of the security deposit may only be addressed under section 38 of the *Act* after the tenancy has ended.

Issues to be Decided

The application now requires only a decision on whether the Notice to End Tenancy for unpaid rent should be set aside or upheld.

Background and Evidence

This tenancy began on November 1, 2010. Rent is \$650 per month and the landlord holds a security deposit of \$325.

During the hearing, the landlord gave evidence that he had initially advised the tenant by letter of May 2, 2011 that he was giving Notice to End the tenancy for unpaid rent, a rent shortfall for rent due on April 1, 2011 of \$400.

He stated that he subsequently served the tenant with the notice on the prescribed forms required under section 52 of the *Act* by posting it on the tenant's door on May 5, 2011.

The tenant concurred that she had received the Notice, that the \$400 rent shortfall remained outstanding and that she was negotiating with the Ministry of Social

Development to pay it. She gave testimony that the landlord had stated that he would credit her with the \$400 for yard work and repairs.

The landlord stated that he had offered to forgive the \$400 but only on the condition that the tenant voluntarily vacated the rental unit.

The landlord submitted substantial evidence pertaining to the notice to end the tenancy for cause but I have not canvassed that evidence herein as there was no formal notice to end the tenancy for cause.

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 within the five days but that the rent shortfall remained unpaid at the time of the hearing.

As to the tenant's claim that the landlord promised to forgive the \$400 in exchange for yard repairs, in the absence of written evidence to the contrary, I accept the landlord's explanation that he had told the tenant he would forego the \$400 only if the tenant moved voluntarily.

Therefore, I found that the Notice to End Tenancy of May 5, 2011 was lawful and valid and I declined to set it aside. On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession pursuant to section 55(1) of the *Act* to take effect two days from service of it on the tenant.

Conclusion

The Notice to End Tenancy of May 5, 2011 is upheld and the landlord's copy of this decision is accompanied by an Order of Possession to take effect two days from service of it upon the tenant.

June 1, 2011