

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End Tenancy issued for cause and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents was done by tenant (2), in person on March 13, 2009, at the property manager's business location.

Both the applicant and the respondent acknowledged receipt of evidence submitted by the other.

The property manager, landlord, and tenant (1) appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, in documentary form, make submissions to me, and to cross exam the other parties.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a Notice to End Tenancy under Section 47 (4) of the *Residential Tenancy Act*
- Whether the tenant is entitled to a monetary claim under section 72(1) of the *Act* to recover the filing fees

Background and Evidence

The fixed term tenancy began January 1, 2009 and expires December 31, 2009. Rent is \$1,150.00 payable on the first of each month and security deposits totalling \$575.00 were paid on or about December 12, 2008. The building is currently undergoing

remediation and so the tenants have been offered a \$150.00 rent reduction until completion of the remediation.

The Property Manager testified that the building, where the rental unit is located, is managed by a different management company. So if an owner occupant has a concern they go directly to this different management company. The property manager who attended this hearing is employed by the owner of the rental unit, and so he deals with the tenants on behalf of the owner and deals with the other property management company on behalf of the owner and tenants.

The Property Manager stated that the rent is paid in full and is always on time. He advised that he received a complaint from the other property management company in February 2009, about a guest of one of his tenants, but that this complaint was a separate issue and had no relation to the issuance of the 1 Month Notice to End Tenancy.

The Property Manager testified that he issued the 1 Month Notice to End Tenancy, without documented proof that the tenant's were responsible for the wrong doing, so as to ward off an invoice from the other property management company for the cost of security. As shown in the documentary evidence, the Property Manager had requested the proof, and chose to proceed with issuing notice based on hearsay and without documentary evidence to support his action.

Tenant (1) testified that the other property management company acted on unsubstantiated rumours. The tenant (1) stated that no one associated with him, his roommate or any of their guests, have ever gone on the scaffolding.

Tenant (1) explained that the scaffolding is accessible from the ground, and anyone could have gained access and climbed up to his floor, leaving a trail of drug paraphernalia behind them. He testified that when he returned home late one evening, just recently, and he had heard someone on the scaffolding running around.

Analysis

In this instance, the burden of proof is on the landlord to prove the tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find that by issuing the 1 Month Notice to End Tenancy, knowing full well that there was no evidence in support of the reasons listed to end the tenancy, only to ward off a threat from the other Property Manager of being billed for the cost of hiring security, borders on abusing this process.

Filing fee - \$50.00. I find that the tenants have succeeded in large and that they should recover the filing fee from the landlord.

Decision

I Hereby Order that the 1 Month Notice to End Tenancy, issued on March 6, 2009, is cancelled, and is of no force or effect.

I Hereby Order the tenants to deduct \$50.00 from the monthly rent payable on May 1, 2009, to recover the filing fee, pursuant to Section 72(a) of the *Residential Tenancy Act*

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 06, 2009.

Dispute Resolution Officer