Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   CNC, FF

Introduction

This hearing was brought by the tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for the proceedings.

Service of the hearing documents was done in accordance with s. 89 of the *Act.* They were given personally to the landlords' agent on April 10, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

As the landlord did not appear at the hearing the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Issues(s) to be decided

- Should the notice to end tenancy for cause be cancelled?
- Whether the tenant is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on September 15, 2008 and ended on April 15, 2009. Rent was $1,200.00 per month payable on the 15th day of each month. This was a month to month tenancy. The tenants paid a security deposit of $600.00 on September 11, 2008.

The landlord and tenant completed a move in condition inspection report but the tenant testifies that the landlord refused to carry out a move out condition inspection report. Consequently the tenants took numerous photographs to show the condition of the rental unit when they moved out and these have been presented as evidence today.

The landlord served the tenants with a One Month Notice to End Tenancy for Cause on March 30, 2009. The reasons stated in this Notice are as follows:

1) That the tenant has caused extraordinary damage to the unit/site or property.
2) The tenant has not done required repairs of damage to the rental unit/site.

The tenant denies both these claims. The tenant testifies that the landlord gave them one hours notice to enter the unit when the landlords' son/agent came around with a realtor. The tenant was then sent a message that the overall condition of the suite was poor and that the stove and carpet needed to be replaced or the tenants would face eviction. The landlord did not give the tenants a time frame to fix any problems and the One Months Notice was handed to them the next day.

The tenant testifies that as tenants they had carried out minor repairs as and when required to the rental unit and when they left the unit it was clean, in a good state of repair and tidy, particularly the stove and carpets. The tenant's photographic evidence confirms this. The tenant said there was a small amount of damage to an area of the carpet which they would happily pay from their security deposit to have covered with an extended doorway trim. Other than that it was just the usual wear and tear on the carpets.

Analysis

As there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated March 30, 2009, it is cancelled. However, the tenants have already left the rental unit so the tenancy will not continue on this basis.

As the tenants have been successful in this matter I find they are entitled to recover the cost of their filing fee of $50.00 from the landlord.

Conclusion

A Monetary Order in the amount of **$50.00** has been issued to the Applicant and a copy of it must be served on the Respondent. If the amount of the order is not paid by the Respondent, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: May 14, 2009.

Dispute Resolution Officer