

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy issued for Cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 26, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on May 31, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, Property Manager, Landlord's Witness and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant in question did not enter into a written tenancy agreement with the Landlord and moved into the rental unit with her friend who had a verbal tenancy agreement with the Landlord.

The Property Manager argued that in December the Male Tenant told him that the Female Tenant would be looking after the rental unit while he was out of the country on vacation. The Landlord and Property Manager provided testimony advising that they

initially thought the female Tenant was just visiting with the Male Tenant and that they were not told that she was a Tenant until sometime in January 2009 when they received a complaint from the upstairs Tenant about the Female Tenant parking in her parking spot and swearing at her.

The Property Manager argued that the Male Tenant was the one who always paid the rent to him and that the Female Tenant handed in the rent money on the one occasion when the Male Tenant was out of the Country on vacation, so they really had no way of knowing that the Female Tenant was residing there and that they just thought she was a guest.

The Landlord's Witness testified that since the Female Tenant has moved into the lower rental unit she has lost her quiet enjoyment of her home. The Witness argued that since September 2008 there is constant noise coming from the lower rental unit, that there is music playing constantly, that the Female Tenant swears at her and that the Female Tenant has threatened her personally by stating "you don't know what I can do".

The Landlord provided a chronological listing of events with respect to the Female Tenant and has requested that an Order of Possession be issued for as quickly as possible.

The Property Manager stated that he took June rent from the Male Tenant but that they have not collected rent for July from either Tenant as they wanted to wait until after the Dispute Resolution Hearing to insure the validity of the 1 Month Notice to End Tenancy.

The Landlord testified that she entered into a written tenancy agreement with the Male Tenant on June 5, 2009 and that she informed the Male Tenant that he was not allowed to sublet without the Landlord's written permission.

The Female Tenant argued that the Landlord and Property Manager knew she was living there because her 4 year old child's toys were all over the place, and that they were lying when they said they didn't know she was living there.

The Female Tenant testified that she never parked in the up stair tenant's parking spot, that it was the Male Tenant's car and she did not know where the keys were to move the vehicle.

The Female Tenant argued that she has never swore at the upstairs Tenant or disturbed her and that she felt the upstairs tenant was lying.

The Female Tenant argued that the Male Tenant would not have known what he was signing when he signed the statement provided in the Landlord's evidence because the Male Tenant does not speak English.

The Property Manager argued that the Male Tenant does speak English and that when the Male Tenant called the Property Manager to discuss the Notice of Dispute Resolution the Male Tenant told the Property Manager that he did not want to be involved with the hearing but that he wanted the Female Tenant to move out. The Property Manager stated that the Male Tenant was accompanied by his friend who assisted the Property Manager in explaining the statement the Male Tenant signed so the Property Manager testified that he felt the Male Tenant knew exactly what he was signing.

The Female Tenant argued that the Property Manager was not telling the truth because she said that the Male Tenant would not have signed the document if he understood what it said.

Analysis

Section 47 of the Residential Tenancy Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant significantly interfered with or

unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or Tenant.

The Landlord provided documentary evidence and Witness testimony in support of their issuance of the 1 Month Notice to End Tenancy while the Tenant's defence was created by attacking the veracity of the Landlord, Witness and Property Manager.

Section 55 of the *Residential Tenancy Act* states that if a tenant makes application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an Order of Possession and the director dismisses the tenant's application or upholds the landlord's notice.

Based on the above, I find that the 1 Month Notice to End Tenancy for Cause issued on May 25, 2009, is valid and of effect. Based on the aforementioned I hereby grant an Order of Possession to the Landlord.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court 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: July 06, 2009.

Dispute Resolution Officer