

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy issued for cause, and to recover the filing fee for the Application.

The Tenant has difficulties communicating in English and appeared with an Advocate to assist him. The Tenant provided affirmed testimony.

The Tenant, with the Advocate as a witness, served an Agent for the Landlord with the Notice of Hearing and Application for Dispute Resolution in person, on August 7, 2009. I find the Landlord was duly served with the Notice of Hearing and Application for Dispute Resolution. Despite this no one appeared on behalf of the Landlord.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

In the late afternoon of July 23, 2009, the police received a complaint that there was what sounded like gunshots coming from the residential building where the rental unit is located.

It appears from the police report, provided in evidence by the Tenant, that several persons in the area called to complain they heard the same type of noises.

Several police officers responded to the call. The police determined that the noises might have come from the rental unit occupied by the Tenant.

The report indicates the Tenant also told the police, upon their arrival at the rental unit, that he had heard similar sounds as well. However, the Tenant explained to the police that he thought the sounds were a garbage dumpster lid being slammed shut repeatedly.

There is also a note in the police report that the noise may have been firecrackers.

After investigating the rental unit and the Tenant, the police determined that there was nothing in the rental unit which would have caused the noise, such as a firearm. There where no charges laid against the Tenant.

The report concluded there was, "... no explanation as to where the noise came from..."

Analysis

In Applications where a Tenant is applying to dispute a Notice to End Tenancy, the Landlord presents their case first in the hearing. The Landlord has an onus to prove the Notice to End Tenancy is valid.

In this particular case, the Landlord did not participate in the hearing and did not submit any evidence in support of the Notice to End Tenancy.

The Tenant's evidence is persuasive that there was a mistake in what noises were heard and where these noises came from.

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find that the Notice to End Tenancy must be cancelled.

Therefore, I order the Notice to End Tenancy dated July 31, 2009, be cancelled and is of no force or effect.

As the Tenant has been successful in making his claim, I allow the Tenant to recover the **\$50.00** filing fee for this Application from the Landlord.

The Tenant may deduct \$50.00 from one rent payment.

Conclusion

The Application for Dispute Resolution of the Tenant is allowed.

The Notice to End Tenancy is cancelled, and is of no force or effect,

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: September 22, 2009.

Dispute Resolution Officer