

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 July 17, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on July 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to an Order under sections 47 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2007 with the monthly rent payable on the first of each month in the amount of \$425.00. The Tenant paid a security deposit of \$212.50 on November 1, 2007.

The Tenant testified that the Landlord issued her a 1 Month Notice to End Tenancy for Cause dated June 26, 2009. The Tenant argued that she has never sublet her rental unit or allowed an unreasonable amount of people in the rental unit.

The Tenant argued that the Landlord came to her rental unit on August 6, 2009 to serve her a 2 Month Notice to End Tenancy, that was back dated to June 26, 2009, stating that the rental unit had been sold and that the Tenant had to vacate the rental unit by September 1, 2009.

The Tenant testified that she has found a new place to live and that she has spoken to the Landlord and informed him that she will not be able to fully vacate and clean the unit until September 5, 2009.

The Tenant advised that she was told the rental unit has sold and that since being issued the 2 Month Notice to End Tenancy the Tenant decided to put a stop payment on her August 2009 rent payment as her compensation for receiving the notice.

The Tenant appeared today to request to have her name cleared off of the notice to end tenancy for cause, stating that she did not breach her tenancy agreement.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence. I hereby cancel the 1 Month Notice to End Tenancy for Cause, issued on June 26, 2009, as the Landlord has failed to prove the merits of the notice.

The Tenant was issued a 2 Month Notice to End Tenancy for Landlord's use and I find the Tenant is entitled to compensation as stipulated under section 51 (1.1) of the Act that states a Tenant may withhold the compensation equivalent of one month's rent, from the last month's rent payable. In this case the Tenant withheld her August 2009 rent payment by putting a stop payment on the cheque she provided to the Landlord prior to receiving the 2 Month Notice to End Tenancy on August 6, 2009 and I find that the Tenant has acted within her right as set forth under section 51 (1.1) of the Act and that her August 2009 rent is considered paid in full.

The testimony and evidence before me suggests that the Landlord had the rental unit up for sale and instead of issuing the Tenant with the proper 2 month notice; the Landlord may have tried to avoid his obligation of providing the Tenant with 1 month's compensation by trying to evict the Tenant for cause. I must caution the Landlord that he could be subject to an administrative penalty if ever proven that he purposely avoided his obligations as required under the *Residential Tenancy Act*.

The Landlord is hereby instructed to administer the Tenant's security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The 1 Month Notice to End Tenancy for Cause, issued June 26, 2009, is hereby cancelled and of no use 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 01, 2009.

Dispute Resolution Officer