

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy 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 certified mail on October 7, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlord was deemed to be served the hearing documents on October 12, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and 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 under section 47 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy began on August 1, 2009 and is set to expire on July 31, 2010. The monthly rent is payable on the first of each month in the amount of \$1,500.00 and the Tenants paid a security deposit of \$750.00 on July 31, 2009.

The Landlord testified that she collected an additional deposit on July 31, 2009 in the amount of \$200.00 and the Landlord is holding this deposit for payments towards the final gas and hydro bill, after the tenancy ends.

The Landlord argued that when doing yard work at the rental unit in August 2009, she saw two people walk into the rental unit and these two people told the Landlord that they lived at the rental unit.

The Landlord stated that she received a telephone call on September 22, 2009 from one of the Tenants requesting to have a tenant removed from the lease and to have a new tenant added to the Lease. The Landlord argued that she had a meeting with the Tenants on September 23, 2009 and that she told the Tenants that she would not agree to rewriting the lease and changing the names of the Tenants.

The Tenant testified that the Landlord said to the Tenants, at the September 23, 2009 meeting, "maybe I'll evict you".

The Landlord advised that she issued the 1 Month Notice to End Tenancy for Cause on September 24, 2009 and that she personally served the Female Tenant with the notice on September 27, 2009.

The Tenant testified that she received the notice to end tenancy on September 27, 2009. The Tenant argued that they have paid October and November 2009 rent since receiving the notice to end tenancy and that the Landlord issued receipts for "rent" for each of these months.

The Landlord confirmed that receipts were issued for "rent" and "utilities" for October 2009 and November 2009.

### Analysis

Based on the evidence and testimony before me the Landlord accepted rent for the period after the effective date of the 1 Month Notice to End Tenancy issued on September 24, 2009 and now the intention of the Landlord is at issue. In this case the Landlord did not provide the Tenants with a receipt showing the October and November rent payments were accepted for "use and occupation only". The Landlord did however issue a receipt stating the payments were received as rent and utilities. As a result the Landlord's actions of accepting the rent payments and issuing the "rent" receipts constitute an implied waiver to the 1 Month Notice to End Tenancy. As a result, I have found that the Landlord has re-instated the tenancy agreement. As per the aforementioned the 1 Month Notice to End tenancy issued for Cause on September 24, 2009 is of no force or effect.

With respect to the current Tenancy agreement, I note that this agreement does not meet the requirements as set out under section 13 of the Act and this agreement also contravenes section 5 of the Act which states that a Landlord and Tenant cannot contract out of the Act.

I find that the Landlord has contravened sections six and seven of the *Residential Tenancy Regulation* by collecting a \$200.00 deposit for utilities and by attempting to charge the Tenants \$20.00 for over night guests. Based on the aforementioned I hereby Order the Tenants to deduct \$200.00 plus \$0.00 of interest from the next rent payment as full recovery of this utility deposit.

I have included in both the Landlord's and Tenant's decisions a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage both parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

The 1 Month Notice to End Tenancy issued on September 24, 2009 is of no force or effect.

The Tenants are HEREBY ORDERED to deduct \$200.00 from their next rent payment, as full recovery of the \$200.00 utility deposit previously taken by the Landlord.

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: November 13, 2009.

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Dispute Resolution Officer