



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, OLC, FF, OPC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause with an effective date of November 30, 2009 be cancelled?

Is the landlord entitled to an order of possession?

Must the landlord be ordered to comply with the Act?

Is either party entitled to filing fee costs?

Background and Evidence

The landlord testified that the tenant has allowed another individual to reside in the rental unit and that this individual has disturbed other tenants; specifically allowing a dog to run loose in the building, frightening other tenants and causing noise disturbances.

The landlord stated that a 10 Day Notice for Unpaid Rent issued on December 9, 2009 is now of no force or effect as the occupant has paid the portion of the rent that had been in arrears. Rent is due on the first day of the month.

The landlord testified that the tenant's guest has caused the landlord to take action under the Act and that they have documented disturbances caused by the occupant.

The landlord stated that they had not been aware that the tenant had allowed someone else to occupy the rental unit while the tenant was absent in Australia but they currently have an understanding with the occupant.

The tenant's agent testified that the issues of noise and rent payments have been resolved and that the landlord has post-dated cheques for January and February 2010 rent. The agent testified that the tenant will remain in Australia until April 2010 and provided an updated service address for use by the landlord.

Analysis

At the start of the hearing I determined that the 1 Month Notice to End Tenancy for Cause which had an effective vacancy date of November 30, 2009 is of no force or effect as it is not signed or dated by the landlord. I base this decision on Section 52(a) of the Act which provides:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

During the hearing I reminded the parties that full rent is due on the first day of the month and that further disturbances caused by the tenant or any of the tenant's guests could result in a breach of the Act and place the tenancy in jeopardy. The tenancy continues and I find that the individual currently residing in the rental unit is an occupant.

The landlord has been provided with a temporary service address for the tenant and will use this address until he is given written notice by the tenant or his agent, of a change in his service address.

As I find that each party's application has some merit and find that neither is entitled to filing fee costs.

Conclusion

The 1 Month Notice to End Tenancy for Cause is cancelled and is of no force or effect. This tenancy shall continue.

I find that neither party is entitled to filing fee costs.

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: December 23, 2009.

Dispute Resolution Officer