



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC and FF

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing the Tenants stated that they wished to withdraw their application to set aside the Notice to End Tenancy, as they have vacated the unit.

The Tenants stated that they personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord's receptionist at the Landlord's place of business on December 01, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Tenants stated that they have lived in the rental unit since March 01, 2007; that they received a 1 Month Notice to End Tenancy for Cause on November 30, 2009; that they did not believe that their behaviour warranted an end to their tenancy; and that on November 30, 2009 they disputed the Notice to End Tenancy that was served on them.

The Tenants stated that their relationship with the caretaker deteriorated significantly after they received the Notice to End Tenancy and they elected to vacate the rental unit on December 27, 2009. They stated that they believed the caretaker had entered their rental unit without authority during December on at least five occasions; that they Landlord had emptied their storage locker and left their belongings in the common area; and that the caretaker was closely monitoring their actions in such a manner that they did not feel comfortable remaining in the rental unit.

The Tenants contend that they are entitled to recover the filing fee for filing their

Application for Dispute Resolution because the Notice to End Tenancy was served without reasonable cause.

Analysis

I find that this tenancy ended on the basis of the 1 Month Notice to End Tenancy that was served by the Landlord. Although the Tenants contend that the Landlord did not have reasonable grounds to end this tenancy pursuant to section 47 of the *Act*, I find that they accepted the tenancy ended pursuant to this Notice when they vacated the rental unit on December 27, 2009. In reaching this conclusion I was strongly influenced by the fact that the Tenants were obligated to remain in the rental unit until they ended the tenancy in accordance with the *Act* or until the Landlord ended the tenancy in accordance with the *Act*. The Tenants cannot argue that the tenancy should continue because the Landlord did not have the right to end the tenancy and then vacate the rental unit without providing the Landlord with proper notice of their intent to vacate the rental unit.

Conclusion

As the Tenants vacated the rental unit prior to the effective date of the Notice to End Tenancy, I find that the Application for Dispute Resolution that was filed by the Tenants was unnecessary. On this basis, I decline to award the Tenants compensation for the fee they paid to file this Application for Dispute Resolution.

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: January 11, 2010.

Dispute Resolution Officer